

AGENDA OF THE CITY COUNCIL AND THE COUNCIL SITTING AS THE REDEVELOPMENT AGENCY AND THE DOWNTOWN FOUNDATION

REGULAR CC/RDA/FNDN MEETING Council Chamber in City Hall 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234

WEDNESDAY, DECEMBER 12, 2001

Study Session - 3:00 p.m.
City Clerk Retirement Reception - 7:00 p.m.
Regular Meeting - 7:30 p.m.

PLEASE NOTE: THE CITY HAS IN EFFECT AN ORDINANCE REGARDING LOBBYING THAT REQUIRES PERSONS BEING PAID TO MAKE A PRESENTATION ON BEHALF OF SOMEONE OTHER THAN THEMSELVES TO DISCLOSE THAT FACT AT THE TIME OF THEIR PRESENTATION, AND, IN SOME INSTANCES, TO REGISTER WITH THE CITY CLERK PRIOR TO APPEARING BEFORE THE CITY COUNCIL, PLANNING COMMISSION OR CITY STAFF.

3:00 P.M.

CALL TO ORDER

- a) Roll Call of City Council/RDA/FNDN Member(s)
- b) Action to Excuse Absent City Council/RDA/FNDN Member(s)

PUBLIC COMMENTS

If any person desires to address members of the City Council, the Redevelopment Agency Board, and/or the Downtown Foundation Board this will be the **only opportunity to do so during this Study Session.** Please limit your remarks to 3 minutes. In response to any public comment on an item or matter which **has not been placed on this Agenda** pursuant to Government Code Section 54954.2, members of the City Council/Redevelopment Agency Board/Downtown Foundation Board may only: 1) briefly respond to statements made or questions posed by the public; 2) ask a question for clarification; 3) make a brief report on his or her own activities; 4) provide a reference to

staff or other resources for factual information; **5)** request staff to report back to the City Council at a subsequent meeting concerning any matter raised by the public; or, **6)** take action to direct staff to place a matter of business on a future Agenda. (California Government Code Section 54954)

<u>STUDY SESSION</u> (Normally, No Action Is Taken On Study Session Items; However, The City Council Does Reserve The Right To Give Specific Policy Direction And To Take Specific Action As Necessary.)

Presentations will be limited to 10 minutes unless other provisions are made in advance.

- Introduction of New Personnel: Police Department (Chief Stan Henry)_
 - Dan Foster, Crime Analyst
- 2. Fiscal Year 2000-2001 Audit Review. (Dudley Haines)
- 3. Hotel and Sales Tax Audit (Dudley Haines)
- 4. Festival of Festivals Briefing (Julie Baumer) (Pg. 1)
- 5. Discussion Regarding Creation of a Community Dialogue Regarding Budget Issues. (Donald Bradley)
- 6. Report on Status of Streets in Cove. (Dave Faessel)
- 7. Councilmember Reports of Committee Meetings.
- 8. Review of December 12, 2001, City Council/Redevelopment Agency Board Agendas.
- 9. City Council/staff Reports and Inquiries Regarding Status of New or Ongoing Projects.
- 10. Closed Session Urgency Items.

CC/RDA/FNDN WILL ADJOURN TO CLOSED SESSION



CLOSED SESSION

AGENDA OF THE CITY COUNCIL AND THE COUNCIL SITTING AS THE REDEVELOPMENT AGENCY AND THE DOWNTOWN FOUNDATION

REGULAR CC/RDA/FNDN MEETING WEDNESDAY, DECEMBER 12, 2001

- CONFERENCE WITH LEGAL COUNSEL REGARDING POTENTIAL LITIGATION pursuant to Government Code Section 54956.9 Subd. (c). Number of Potential Cases: Three
- CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION pursuant to Government Code 54956.9, Subd. (a).

Case Name:

Cindy Samu v. City of Cathedral City

Case No.:

INC 025839

- PERSONNEL MATTER pursuant to Government Code Section 54957.
 Issue for Discussion: Deputy City Clerk
- 3. PERSONNEL MATTER pursuant to Government Code Section 54957.

 Issue for Discussion: 1) American Federation of State, County, and Municipal Employees, Local 3961(AFSCME); 2) Cathedral City Police Officers Association (CCPOA); 3) Cathedral City Professional Firefighters Association (CCPFA); 4) Cathedral City Police and Fire Management Association (CCPFMA).
- 4. CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government Code Section 54956.8. (Susan Moeller)

Property:

Location:

North Side of East Palm Canyon Drive, West of

Monty Hall

Negotiating Parties:

Agencies:

Redevelopment Agency & Palm Canyon

Partners

Property Owner:

Redevelopment Agency

Under Negotiation:

Real Property Negotiations

CC/RDA/FNDN MEETING DECEMBER 12, 2001 PAGE 2

CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to 5.

Government Code Section 54956.8. (Paul Shillcock)

Property:

Various Parcels South of East Palm Canyon Location:

> Drive Between Date Palm and Van Fleet: APN Nos. 687-222-004; 687-224-007; 687-225-011;

687-225-017; and 687-221-001.

Negotiating Parties:

Redevelopment Agency & BCN Agencies:

Redevelopment Agency Property Owner:

Disposition and Development Agreement **Under Negotiation:**

CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to 6.

Government Code Section 54956.8. (Paul Shillcock)

Property:

Vacant Land, Consisting of Approx. 30-Acres Location:

Fronting on Edom Hill Road (APN 659-180-025)

Negotiating Parties:

City of Cathedral City & Cathedral City Agencies:

Mountains Conservancy

Property Owner:

City of Cathedral City Disposition of Property

Under Negotiation:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to 7.

Government Code Section 54956.8. (Susan Moeller)

Property:

Location:

68765 & 68775 "C" Street

Negotiating Parties:

Agencies:

Redevelopment Agency & William DeLaCampa

Property Owner:

William DeLaCampa

Under Negotiation: **Property Acquisition**

CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to 8.

Government Code Section 54956.8. (Paul Shillcock)

Property:

North of 30th Avenue, East of Date Palm Drive Location:

> 670-372-008 Thru -016 APN Nos.

> > 670-373-008 Thru -036

670-060-025

Negotiating Parties:

City of Cathedral City & The Berger Foundation Agencies:

Property Owner: The Berger Foundation

Property Acquisition Under Negotiation:

Adopt motion to recess to closed session RECOMMENDATION:

pursuant to the above noted statutes.

REPORT OF ACTION(S), IF ANY

CC/RDA/FNDN WILL ADJOURN TO **REGULAR MEETING AT 7:30 P.M.**



AGENDA OF THE CITY COUNCIL AND THE COUNCIL SITTING AS THE REDEVELOPMENT AGENCY AND THE DOWNTOWN FOUNDATION

RETIREMENT RECEPTION FOR CITY CLERK - 7:00 P.M. REGULAR CC/RDA/FNDN MEETING - 7:30 P.M. WEDNESDAY, DECEMBER 12, 2001

- a) Invocation
- b) Flag Salute

CLOSED SESSION ANNOUNCEMENTS

PUBLIC COMMENTS

During this part of the meeting, the public is invited to address the City Council, the Redevelopment Agency Board, and/or the Downtown Foundation Board on any matter **not on the Agenda** or any item on the **Consent Agenda** by stepping to the lectern and giving his/her name and City of residence for the record. Unless additional time is authorized by the City Council, remarks on agenda items shall be limited to three minutes. **If you wish to speak on an agenda item, please wait to be recognized under that item.**

In response to any public comment on an item or matter which has not been placed on this Agenda pursuant to Government Code Section 54954.2, members of the City Council, the Redevelopment Agency Board, and/or the Downtown Foundation Board may only: 1) briefly respond to statements made or questions posed by the public; 2) ask a question for clarification; 3) make a brief report on his or her own activities; 4) provide a reference to staff or other resources for factual information: 5) request staff to report back to the City Council at a subsequent meeting concerning any matter raised by the public; or, 6) take action to direct staff to place a matter of business on a future Agenda. (California Covernment Code Section 54954)

AGENDA FINALIZATION

At this time, the City Council, the Redevelopment Agency Board and/or the Downtown Foundation Board may announce any items being pulled from the Agenda or continued to another date.

Urgency Items ("Added Starters"): The Brown Act permits the City Council to take action on any item that does not appear on the Agenda only if 2/3 of the City Council (if all are present) or all members of the Council (if less than all are present) determine there is a need to take immediate action on the item and that the need to take immediate action came to the City Council's attention after the posting of the Agenda.

COUNCIL COMMENTS

Councilmembers' Comments on Items not on the Agenda.

PRESENTATIONS AND PROCLAMATIONS

- Introduction of New Police Officer, Jon Enos. (Police Chief Stan Henry)
- Presentation of Trophy from Festival of Lights Parade to John Weaver. (Mayor George Stettler)
- Certificate of Appreciation to Mark Wasserkrug for his Outstanding Community Service. (Julie Baumer)
- Presentation to Public Works Department for Outstanding Support and Participation in City Events. (Dave Faessel)
- Certificate of Appreciation to Volunteers Who Participated in the City's 20th Birthday Celebration. (Mayor George Stettler)

CALL FOR CORRECTIONS/APPROVAL OF MINUTES

Corrections/Approval of Minutes of the Regular City Council/Redevelopment Agency Board Meeting Held on November 28, 2001.

PLEASE NOTE: THE CITY HAS IN EFFECT AN ORDINANCE REGARDING LOBBYING THAT REQUIRES PERSONS BEING PAID TO MAKE A PRESENTATION ON BEHALF OF SOMEONE OTHER THAN THEMSELVES TO DISCLOSE THAT FACT AT THE TIME OF THEIR PRESENTATION, AND, IN SOME INSTANCES, TO REGISTER WITH THE CITY CLERK PRIOR TO APPEARING BEFORE THE CITY COUNCIL, PLANNING COMMISSION OR CITY STAFF.

CONSENT AGENDA

ALL MATTERS LISTED ON THE CONSENT AGENDA ARE CONSIDERED TO BE ROUTINE IN NATURE AND WILL BE ENACTED BY ONE ROLL CALL VOTE. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS UNLESS MEMBERS OF THE CITY COUNCIL, THE REDEVELOPMENT AGENCY BOARD, THE DOWNTOWN FOUNDATION BOARD AND/OR THE AUDIENCE REQUEST SPECIFIC ITEMS BE REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION AND/OR ACTION.

- CC/RDA

 1. Receive and File Claims and Demands incurred by the City Council and the Redevelopment Agency Board in the total aggregate sum of \$2,349,633.11 for the month of October, 2001. (Pg. 1)
 - a. Recommendation: Receive and File

2.

3.

- COUNCIL
- Approval of preparation and execution of deeds granting the City of Cathedral City's property interests in two parcels (APN 687-225-015 and 687-24-014) located in the area east of Van Fleet and south of East Palm Canyon Drive to the Redevelopment Agency. (Dave Faessel) (Pg. 2)
 - a. Recommendation: Approval
- COUNCIL
- Proposed Ordinance approving an amendment to Specific Plan 10-003 establishing standards and procedures for "Casitas" for properties located within Specific Plan 10-003 generally located south of 30th Avenue, north of McCallum Way, west of DaVall Drive and east of Santoro Road. (2nd Reading) (Cynthia Kinser) (Pg. 6)
 - a. Recommendation: Waive Further Reading and Adopt Ordinance No.
- **RDA**
- 4. Proposed Resolution declaring the intent of the Redevelopment Agency to permit reimbursement of expenditures for certain Downtown Hotel Project costs from the proceeds of certain obligations and direction certain actions. (Paul Shillcock) (Pg. 13)
 - a. Recommendation: Adopt Resolution No. 2001-____

PUBLIC HEARINGS:

- COUNCIL
- 5. Proposed Resolution approving Tentative Tract Map 30256, a request to subdivide approximately 10.05 acres into 42 separate parcels, located east of San Eljay Avenue, south of El Canto Road, north of Baristo Road and west of Santoro Drive (APN 670-130-003), in the R1-7.2s (Single-Family Residential with Specific Plan Overlay) Zone. (Cynthia Kinser) (Pg. 17)
 - a. Report by City Planner
 - b. Public Hearing
 - c. Recommendation: Approve Resolution 2001-___

LEGISLATIVE ACTION:

- COUNCIL
- 6. Proposed Resolution: 1) finding that the adopted procedures were followed in the election of the Project Area Committee (PAC); 2) approving a representative Project Area Committee in connection with

the Fourth Amendment to the Redevelopment Plan for Redevelopment Project Area No. 1; and, 3) directing the Redevelopment Agency to consult with the Project Area Committee (Keith Scott) (Pg. 30)

- a. Report by Redevelopment Director
- b. Public Input
- c. Recommendation: Adopt Resolution No. 2001-____

COUNCIL 7. Report on status of City Parks. (Don Bradley) (Oral Report)

- a. Report by City Manager
- b. Public Input
- c. Take Appropriate Action

FNDN. 8. Approval of the By-Laws of the Cathedral City Downtown Foundation and ratification of an Employment Agreement with Ed Basaillon for management of the IMAX Theater. (Susan Moeller) (Pg. 38)

- a. Report by Redevelopment Director
- b. Public Input
- c. Recommendation: Approval

RDA/FNDN 9. Approval of lease with the Cathedral City Downtown Foundation (in substantial conformance with the attached Lease Agreement) and a Grant Agreement providing up to \$456,000 to the Foundation for the operation of the Desert IMAX Theater for the Fiscal Year 2001-2002 (in substantial conformance with the attached Lease Agreement) (Susan Moeller) (Pg. 59)

- a. Report by Redevelopment Director
- b. Public Input
- c. Recommendation: Approval

Approval for use of the City's Community Development Block Grant Funds for Fiscal Year 2001/2002, in the amount of \$254,533, for the off-site improvements of the Downtown Hotel/Conference Center Project and that the City Council authorize the City Manager to sign a Supplemental Agreement with the Riverside County Economic Development Agency for the entitlement. (Tony Barton) (Pg. 116)

- a. Report by Recreation Manager
- b. Public Input
- c. Recommendation: Approval

RDA

- 11. Authorization for the Redevelopment Director to purchase property located at 68556 Avenida Lalo Guerrero (APN 687-170-007) for an amount not-to-exceed \$280,000 (plus approximately \$910 for buyer's share of estimated escrow costs) to be paid from the Redevelopment Agency Affordable Housing Set-Aside Fund (Acct. 211-8870, Site Acquisitions/Landbanking) for the purpose of affordable housing. (Warren Bradshaw) (Pg. 121)
 - a. Report by Redevelopment Director
 - b. Public Input
 - c. Recommendation: Approval

COUNCIL

- 12. Approval of Final Parcel Map No. 29719 (Ritz Carlton Golf Course), accept the dedications made to the City on the final map, and authorize the execution of the performance agreement. (Dave Faessel) (Pg. 125)
 - a. Report by City Engineer
 - b. Public Input
 - c. Recommendation: Approval

COUNCIL REPORTS ON CITIZEN INQUIRIES AND CONCERNS.

ADJOURNMENT

To the next regularly scheduled meeting of the City Council/Redevelopment Agency Board **Wednesday**, **January 9**, **2001**.

NOTE TO THE PUBLIC

Agendas and back-up material giving more information on each agenda item, with the staff's recommendations, have been provided to all Councilmembers. These same materials are on display in the main City Hall lobby, in the Police Department lobby, in the lobby outside the Council Chamber, and in the City Clerk's office from the Thursday preceding the regular Council meeting. Staff "recommendations" are only that; the City Council makes its own decisions based on all information provided to them. The Agenda, by itself, can also be reviewed on the City's Web Site at:

www.cathedralcity.gov

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk by phone at (760) 770-0322. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

PLEASE BE ADVISED THAT CITY HALL IS CLOSED EVERY FRIDAY



CITY OF CATHEDRAL CITY STUDY SESSION MEMORANDUM

TO:

The Honorable Mayor and Members of the City Council

FROM:

Julie Baumer, Deputy City Manager

SUBJECT:

That the City Council Evaluate Success of the Festival of Festivals and Determine

Whether to Direct Staff to Prepare Necessary Documents to Move Ahead with the

2nd Annual Event

DATE:

December 12, 2001

RECOMMENDATION:

That the City Council evaluate success of the Festival of Festivals and determine whether to direct staff to prepare necessary documents to move ahead with the 2nd annual event. Funds are already allocated in the 2001-2002 FY budget to cover a sponsorship payment of \$25,000 that would be due in March, 2002.

BACKGROUND

The first Coachella Valley Festivals of Festivals hosted by the City of Cathedral City took place October 25 - November 4, 2001.

The City Council had made a decision to sponsor the event for several reasons.

- ① The staging of special events brings people into Pickfair at a time when the downtown entertainment district is emerging. They create fun, excitement and media attention for the city, various venues and event itself.
- ② It was interested in showcasing the new Mary Pickford Theatre at a film-oriented event. The new 14-screen theater was the site of opening and closing nights, a benefit for the Children's Discovery Museum and numerous screenings during the 11-day Festival of Festivals. It was during the festival that the Mary Pickford Salon made its debut at an ancillary grand debut.
- ③ People attending the festival also had the chance to stop by the Desert IMAX to pick up tickets to the festival films and enter the lobby to obtain festival programs, buy food at the concession stands or catch a movie at that facility.

- Craig Prater's proposal offered the city the opportunity to upgrade the image of Cathedral City with a cultural event that began to rebrand the city to residents throughout the valley, outside media and the Southern California market. Women in Film, Childhelp USA, 150 international film makers, noted journalists and sponsors became familiar with Cathedral City and now associate it with a class event.
- ⑤ A Latino mini festival within the Festival of Festivals gave the City the opportunity to stage Fiesta del Cine, marking the first time the city had sponsored an event specifically paying tribute to the Latino culture. It drew an astonishing 8,000 people to the downtown, thanks in large part to the effectiveness of Spanish-language media in reaching a significant segment of Cathedral City's population. New lines of communication were opened for the future.

ANALYSIS:

In assessing the festival's success, the Council might want to evaluate whether the goals of boosting the city's image locally and beginning to define Cathedral City in Southern California; introducing people to the downtown even though it is not a finished product; and paying tribute to the Latino population were achieved.

The city's first-year sponsorship of the Festival of Festivals cost \$50,000.

If the main goals were achieved, an exact dollar amount of their value cannot be measured. However, it is possible to calculate a value of the media coverage and other sponsorship benefits the city received.

News about the Festival in Cathedral City appeared in such far-reaching and diverse publications as Daily Variety, the Pittsburgh Post Gazette, Palm Springs Life, the Los Angeles Times and in the PennySaver throughout Southern California.

If the media space and time had been purchased, the estimated price tag would have topped the \$150,000 mark.

Further value is provided by 100 street banners exposed to some 38,000 motorists along East Palm Canyon each day; international publicity generated by personal publicists for the 150 filmmakers, including 15 who won awards; press kits; Chamber of Commerce newsletters; promotion by the Palm Springs Desert Resorts Convention and Visitors Authority; internet exposure, including msn; and visitors who patronized local businesses. Therefore, the total value that the City received from Festival of Festivals could easily exceed \$200,000.

As a result of the Festival, more people learned about the city's plans for downtown, the Pickford Theatre and the Desert IMAX. A noted producer attending the event has contacted staff about a possible major Latino project here. Drama and film students from San Diego and Arizona want to return. These are some of the many intrinsic values that cannot be measured, but that serve to spotlight what Cathedral City offers now and what it promises for the future.

JB/tlm

Attachments

(TLM) JULIE BAUMER\AGENDA REPORTS\FESTIVAL OF FESTIVALS 12 12 01



Craig Prater FR:

November 23, 2001 DA:

Summary of Media Exposure RE:

Below are listing of miscellaneous media exposures not listed with the print, radio and television listings.

television listings.			
1.	Press Kits	250 kits to attending media and film industry. Press kits not only promoted the film festival and Cathedral City, but also various businesses who wanted to promote their individual businesses. (see attached)	
2.	Street Banners	100 banners with Host City: Cathedral City An independent study of street banners in Palm Springs In 1996 showed a value of \$36,637.50 for 113 banners.	
3.	Stationary/Envelopes	A total of 10,000 stationary pieces were used leading up to and during the film festival. All pieces had Cathedral City listed as the Host City and the Mary Pickford Theatre as the official theater location.	
4.	Ticketing	In order to attend any film at any location, everyone had to come to Cathedral City's IMAX Theater to obtain their tickets.	
5.	Guest Speaker	Leading up to the event, Craig Prater spoke at Rotary, women's groups, real estate groups, senior centers and non-profit organizations.	
6.	Palm Springs Life	A copy of the festival's poster and mention was given in the Palm Springs Life Calendar Section.	
7.	Awards Party	A total of 15 different awards were given to filmmakers who work with their personal publicists to promote their award given by the Festival of Festivals at the IMAX Theatre in Cathedral City.	
8.	Cathedral City Award	The city of Cathedral City received the first annual Mayor's Award. This award goes to the sponsor who surpassed all sponsorship guidelines.	
9.	Inter-Net Exposure	The city of Cathedral City as the Host City was continually mentioned in all web-site listings on the official film festival web site as well as Notesfromhollywood.com.	
10	. Box Office Flyers	A total of 10,000 individual flyers promoting the various film programs were distributed throughout the valley and at the IMAX box office location.	



SAN DIEGO CITY SCHOOLS

POINT LOMA HIGH SCHOOL State Distinguished School 2335 Chatsworth Blvd., San Diego, CA 92106-1699 (619) 223-3121

Craig Prater 100 S. Sunrise Way #434 Palm Springs, CA 92262

November 12, 2001

Dear Craig,

Thank you so much for organizing a terrific day at the Festival of Festivals for my students at Point Loma High School. You and your staff (and the Cathedral City Police Department as well) should be congratulated for the courtesy extended to all my students. They had a wonderful time and a sampling of the enclosed papers hopefully will illustrate to you and your staff what a powerful and exciting experience it was for them to attend the screenings of the films, meet with you and your staff, and mingle with the residents of Cathedral City. In almost every paper, the students remarked that they hope to return next year - and for a longer period of time! You've made quite an impression on them.

Please extend my gratitude to the Festival Committee and any sponsors of the Festival. The Festival of Festivals is without a doubt a great addition to the cultural community of the region.

I hope you and your committee enjoy the students' remarks (you've made them passionate watchers of international cinema!). Again, thank you for your commitment and dedication to opening the eyes of cinema to your community and mine!

Best wishes

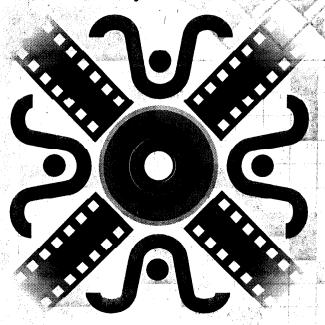
Larry Zeiger

Visual Performing Arts LZeiger@aol.com



3 July al Jenn Swat page

at Coachella Valley's Festival of Festivals



The Mary Pickford Theater, in Cathedral City, CA will join other desert theaters to show the best films from film festivals throughout the world, including a showcase of Latino films. As part of the Latino film program, Cathedral City will be the first stop on the US tour of films presented by the Mexican government. The Consul General of Mexico, in addition to a number of invited dignitaries and celebrities, will attend the showcase of this year's finest films made in Mexico.

Fiesta del Cine, a festival celebrating Latino heritage and culture, will be held on Saturday, November 3, 2001, as part of the Latino film program. Staged in the Town Square of Cathedral City, the area will be transformed into a zocalo - the "heart of a city" with the vibrant spirit known in cities in Latin America and Spain.

From 11:00 a.m. to 9:30 p.m., the best of the desert's entertainment,

with a Latin-flair, will be featured, with a special concert concluding the event in the evening; booth after booth of purveyors of Latino crafts and cuisine will be available for your shopping and dining pleasure; and a variety of activities for the young and the young-at-heart will be presented by various community groups from Cathedral City and the desert. There will be special opportunities for children to participate in many special activities throughout the day.

CATHEDRAL

November 3, 2001 • 11:00 AM to 9:30 PM

Pannepauer page

WEELONG, 1, 2



Festival of Festivals launches first valleywide film festival PAGE 3

Could be Endland Jun

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ARMY ARCHERD

EARE BACK AFTER A WEEK of sun and fun (and no phones!) as the Palm Springs season started. To help kick off the desert doings was the Festival of Festivals, whose executive director is Craig Prater, alumnus of the Palm Springs Intl. Film Festival. Fest of Fests had 116 films from 25 countries shown on screens throughout the desert, from the giant Imax to the beautiful new Mary Pickford theater in Cathedral City. One of those shown at the latter was Tony Griffin's "Squint" in which the son of Merv Griffin makes his directorial debut; he also wrote and plays two roles with co-star Joe Bologna. Papa Merv was down at his Merv Criffin Resort Hotel and Givenchy Spa for the event. Tonight Griffin, fils, shows his pic to L.A. friends including Anne Bancroft & Mel Brooks, Carol & Dom DeLuise, Sheila & Ron Clark, Kenny G., Cary, Cassian and Damian Elwes, Pat & Dick Van Patten ... The Festival of Festivals wound Sunday night with a gala in which Gale Anne Hurd presented the best overall film award to "The Tunnel," directed by Roland Suso Richter and produced by Nico Hofmann and Ariane Krampe ... Tonight "The Palm Springs Follies" launches its 11th season with "Ain't She Sweet," Riff Markowitz's extravaganza (and I mean it!) dedicated to NYC, from Texas Guinan era to today. Anna Maria Alberghetti is the opening stanza's singing headliner.

Miss one? Catch up at Variety.com/army

Variety.com/army

Washing meadliner.

Washing meadliner.

Washing meadliner.

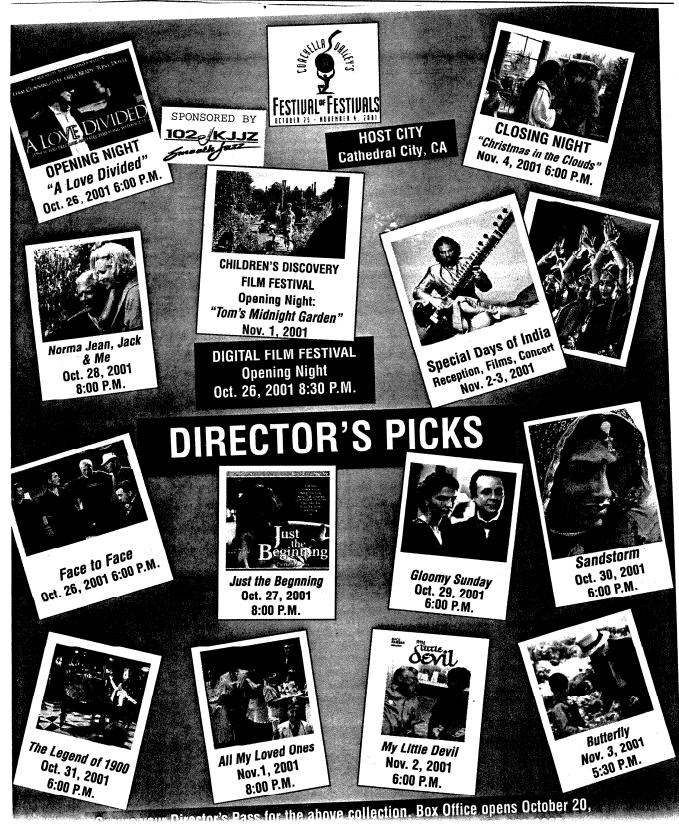
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October 2001





CITY OF CATHEDRAL CITY

MINUTES OF THE CITY COUNCIL AND THE CITY COUNCIL SITTING AS THE REDEVELOPMENT AGENCY

WEDNESDAY, NOVEMBER 28, 2001

This regular meeting of the City Council, also sitting as the Redevelopment Agency, was called to order by Mayor/RDA Board Chairman George Stettler in the Council Chamber at 68-700 Avenida Lalo Guerrero, Cathedral City, California, on November 28, 2001, at a 3:00 p.m. Study Session with Roll Call of members present.

ROLL CALL:

Present: Councilmembers/RDA Board Members Sarah Di Grandi,

Charles England and Mayor/RDA Board Chairman George

Stettler

Absent: Councilmember/RDA Board Member Kathleen De Rosa and

Mayor Pro Tem/RDA Board Member Gregory Pettis

Councilmember/RDA Board Member England made a motion, seconded by Councilmember/RDA Board Member Di Grandi, carried by a 3-0 vote, to excuse Councilmember/RDA Board Member De Rosa and Mayor Pro Tem/RDA Board Member Pettis.

The regular evening meeting began at 7:30 p.m., and was opened by Mayor/RDA Chairman Stettler with an invocation by Councilmember/RDA Board Member England, followed by the flag salute led by Councilmember/RDA Board Member Sarah Di Grandi.

Councilmember/RDA Board Member Kathleen De Rosa arrived at approximately 5:00 p.m.

POSTED CLOSED SESSION:

1. CONFERENCE WITH LEGAL COUNSEL REGARDING POTENTIAL LITIGATION pursuant to government Code Section 54956.9 Subd. (c).

Number of Potential Cases: Three

CALL FOR CORRECTIONS/APPROVAL OF MINUTES:

Corrections/Approval of Minutes of the Regular City Council/Redevelopment Agency Board Meeting Held on November 14, 2001, were approved as amended.

CONSENT AGENDA:

Councilmember/RDA Board Member De Rosa made a motion, seconded by Councilmember/RDA Board Member England, carried by a 4-0 vote, with Mayor Pro Tem/RDA Board Member Pettis absent, to approve the Consent Agenda.

- 1. Adopted **Resolution No. 2001-79** authorizing the submittal of a funding request to the State of California Integrated Waste Management Board and identifying the City Manager as the authorized officer.
- 1A. **ADDED STARTER:** Adopted **Resolution No. 2001-78** adding the widening of the west side of Santoro Drive, north of McCallum Way, to the work of Assessment District AD 2001-01; directing its acquisition; approving the contribution of \$27,000 to the District Improvement Fund; finding that the assessments previously levied will not be affected by the new work; and, authorizing the modification of the Funding and Acquisition Agreement with Cathedral land Associates, LP (Cornerstone), to cover the new work.

PUBLIC HEARINGS:

2. Proposed Ordinance approving an amendment to Specific Plan 10-003; a request to establish standards and procedures for "Casitas" on properties located within Specific Plan 10-003 generally located south of 30th Avenue, North of Mc Callum Way, west of Da Vall Drive, and east of Santoro Drive. (Applicant: Cornerstone Developers, Inc.)

Report was presented by City Planner, Cynthia Kinser.

Public Hearing was opened:

Roger Latell spoke in favor of the project.

Public Hearing was closed.

Councilmember Di Grandi made a motion, seconded by Councilmember De Rosa, carried by a 4-0 vote, with Mayor Pro Tem Pettis absent, **to Waive Further Reading and Introduce the Ordinance.**

3. Proposed Resolution approving Tentative Tract Map 30256, a request to subdivide approximately 10.05 acres into 42 separate parcels, located east of San Eljay Avenue, south of El Canto Road, north of Baristo Road and west of Santoro Drive (APN 670-130-003), in the R1-7.2s (Single-Family Residential with Specific Plan Overlay) Zone.

Mayor Stettler announced that this public hearing would be opened for public comment and then continued to the December 12 Council meeting. Councilmember England announced that he would be abstaining from any discussion of this matter due to a business conflict.

Public Hearing was opened and closed without comment. There was no further discussion of this matter.

LEGISLATIVE ACTION:

4. Authorized the execution of the Service Provider Agreement between the City of Cathedral City and the Cathedral City Senior Center. Councilmember De Rosa abstained from discussion in this matter due to a business conflict.

Report was presented by Recreation Manager, Tony Barton.

Public Input was opened:

The following persons spoke in favor of this request.

- Kim Edwards, Cathedral City
- Rose Glitzer, Cathedral City

Public Input was closed.

Councilmember England made a motion, seconded by Councilmember Di Grandi, carried by a 3-0 vote, with Councilmember De Rosa abstaining and Mayor Pro Tem Pettis absent, to approve staff's request by Minute Order No. 3320.

5. First Quarter Fiscal Year 2001-2002 Budget Review. **This was a PowerPoint presentation only.**

Presentation was made by Administrative Services Director, Dudley Haines.

No action was taken.

6. Authorized the City Manager to incur costs of co-sponsoring the Pepsi Challenge Games in the amount of \$30,000 plus Police and Fire Services Valued at \$1750. Councilmember De Rosa abstained from discussion on this matter due to a business conflict.

Report was presented by Recreation Manager, Tony Barton.

Public Input was opened and closed without comment.

Councilmember Di Grandi made a motion, seconded by Councilmember England, carried by a 3-0 vote, with Councilmember De Rosa abstaining and Mayor Pro Tem Pettis absent, to approve staff's request by Minute Order No. 3321.

7. Approved a contract with CDE Resources to pave and widen a portion of 30th Avenue, east of Date Palm Drive in an amount of \$45,985.00 plus 10% contingency and to remove and replace existing asphalt on Landau Blvd., south of Vista Chino in an amount of \$27,232.00 plus 10% contingency.

Report was presented by Associate Engineer, Jerry Jack.

Public Input was opened and closed without comment.

Motion was made by Councilmember De Rosa, seconded by Councilmember England, carried by a 4-0 vote, with Mayor Pro Tem Pettis absent, to approve staff's request by Minute Order No. 3322.

8. Authorized the City Attorney to amend the City's Solid Waste and Recycling Franchise Agreement to include additional programs for residents and businesses in Cathedral City and instructed staff to work with Waste Management to facilitate the establishment of a transfer station in Cathedral City. Councilmember De Rosa abstained from discussion of this matter due to a business conflict.

Reports were presented by Environmental Conservation Manager, Deanna Pressgrove and Frank Orlett of Waste Management of the Desert.

Public Input was opened:

- Bill Cohen, Cathedral City stated that he is a member of the Model Airplane Club who recently received a piece of property for the club's use, and through the courtesy and help of Waste Management of the Desert and Debra McGarrey, who furnished dumpsters for cleanup of the property, we were able to clean the land in one weekend. United Rental loaned us a tractor, First Rental loaned us two tractors and he thanked them all for their assistance. He had a question about trash receptacles being picked up at homes of disabled seniors. Frank Orlett of Waste Management responded that the drivers of the trash trucks will be happy to come to the house and carry them out for disabled persons.
- Richard Altman, Cathedral City stated he has known Waste Management folks for the past 12-13 years and they do a

terrific job. He queried as to when the receptacles for the green waste would be delivered and urged Council to approve this request.

Gene Touchet, Cathedral City - requested a little more information about the recycling warning notices. Frank Orlett from Waste Management of the Desert responded.

Public Input was closed.

Councilmember England made a motion, seconded by Councilmember Di Grandi, carried by a 3-0 vote, with Councilmember De Rosa abstaining and Mayor Pro Tem Pettis absent, to approve staff's request by Minute Order No. 3323.

9. Approval of Final Parcel Map No. 29719 (Ritz Carlton Golf Course), accept the dedications made to the City on the final map, and authorize the execution of the performance agreement.

Mayor Stettler announced that this item would be continued to the meeting of December 12, 2001. No discussion was heard.

COUNCIL REPORTS ON CITIZEN INQUIRIES AND CONCERNS:

Councilmember De Rosa stated she has received several e-mails regarding the Dinah Shore/Date Palm/Cathedral Canyon roadwork being done. She stated she has e-mailed a lot of those questions to Dave Faessel and Jerry Jack and they have been incredibly wonderful about answering everything and getting responses back to the people. Those people have e-mailed me back and have even approached me tonight and said they appreciated the opportunity to get answers to their questions so they know what is going on. She wanted to publicly thank Dave and Jerry for all of their help and input. She also directed a comment to Cynthia Kinser stating that in her (Cynthia's) absence, Rebecca Maddox handled the Salvation Army Project report at the last Council meeting and did a great job. Getting people out to that meeting was terrific and she wished to thank Cynthia and Rebecca for a job well done.

ADJOURNMENT:

As there was no further business for discussion, this meeting was adjourned at 10:00 p.m.

Donna M. Velotta City Clerk

CITY COUNCIL CATHEDRAL CITY REDEVELOPMENT AGENCY

STAFF MEMORANDUM

TO:

City Council

Redevelopment Agency Members

FROM:

Administrative Services Director

DATE:

December 12, 2001

SUBJECT: RECEIVE AND FILE PAYMENT OF CLAIMS AND DEMANDS

Recommendation:

That the City Council/Redevelopment Agency Board Members receive and file payment of claims and demands in the aggregate sum of \$2,349,633.11 for the month of October, 2001.

I HEREBY CERTIFY that in my judgment these demands were legally due and owing by the City Council/Redevelopment Agency Board; that funds were available for payment thereof, and in all other respects, the demands conform to the criteria set forth in Section 3.16.050 of the Cathedral City Municipal Code.

Administrative Services Director

NOTE: The Demand Register is located in the back of the Agenda Book.

CITY OF CATHEDRAL CITY CITY COUNCIL AGENDA

SUBJECT: Downtown Area: Conveyance of City Interests in Two Parcels to the

Redevelopment Agency.

MEETING DATE: December 12, 2001 DEPARTMENT: Engineering

DEADLINE FOR ACTION: N/A Engineering **DIVISION:**

CONTACT PERSON: Dave Faessel, City Engineer

APPROVED:

inance

RECOMMENDATION:

That the City Council approve the preparation and execution of Deeds granting the City of Cathedral City's property interests to the Redevelopment Agency in two properties (APN 687-225-015 and 687-224-014) located in the area east of Van Fleet and south of East Palm Canyon Drive.

BACKGROUND/ANALYSIS:

The City of Cathedral City either owns or jointly owns, in common with the RDA, two parcels located in the Downtown area. located east of Van Fleet and south of East Palm These parcels were acquired either in whole or in large part with Redevelopment Agency or Housing funds. Consequently, the parcels should be in the name of the Redevelopment Agency only. The parcels are shown in the attached sketch.

APN 687-225-015, located at 68826 "D" Street: This single family home parcel was acquired with Housing funds in 1997. The house was demolished and the parcel is vacant. It was intended to be acquired in the name of the Redevelopment Agency, but was mistakenly put into the name of the City of Cathedral City.

APN 687-224-014, the former Sonora Restaurant parcel: This commercial property was acquired through eminent domain in 1999. Acquisition began for a portion of the parcel for highway widening, but ended up in a total take of the property from the owner. The Judgment and Final Order of Condemnation placed ownership of this land jointly in the name of the co-plaintiffs, the City and the Redevelopment Agency.

Since this was an RDA project and paid for predominantly with RDA funds, the parcel ought to be in the name of the RDA only, except for the portion used for highway widening.

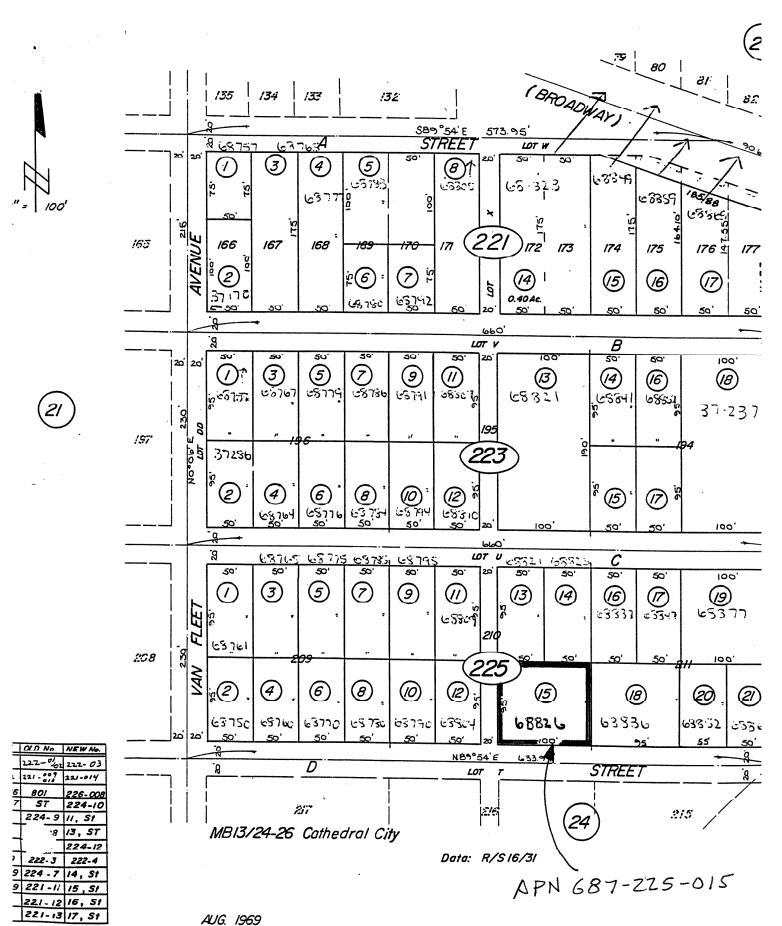
If approved by Council, staff will prepare appropriate deeds transferring the City of Cathedral City's interests in each of the above to the Redevelopment Agency, who was intended to be the owner of each in the first place.

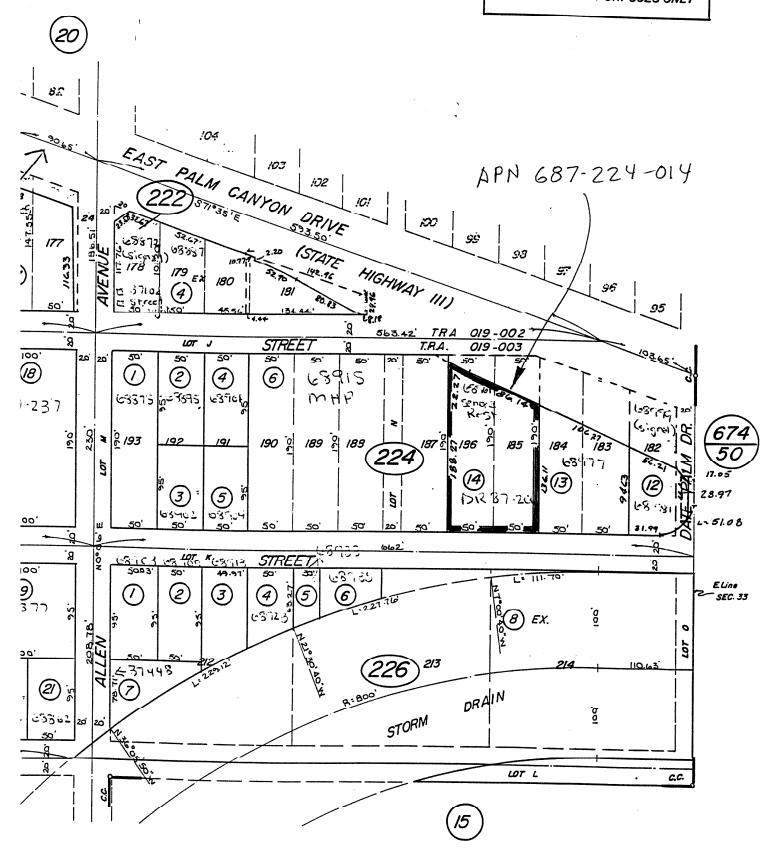
FISCAL IMPACT:

There is no financial impact as a result of this action. Both parcels have already been acquired and paid for. This action is technical in nature, and is a "clean-up" action.

ATTACHMENTS:

Vicinity sketch





ASSESSOR'S MAP BK687 PG.22 RIVERSIDE COUNTY, CALIF.



DRDINANCE

STAFF REPORT

for consideration by the CATHEDRAL CITY CITYCOUNCIL

SUBJECT:

RESOLUTION APPROVING AN AMENDMENT TO SPECIFIC PLAN 10-003 ESTABLISHING STANDARDS AND PROCEDURES FOR 'CASITAS' FOR PROPERTIES LOCATED WITHIN SPECIFIC PLAN 10-003 GENERALLY LOCATED SOUTH OF 30th AVENUE, NORTH OF MCCALLUM WAY, WEST OF DAVALL DRIVE AND EAST OF SANTORO ROAD.

DEPARTMENT: Planning **MEETING DATE:** November 28, 2001

CONTACT PERSON: Cynthia S. Kinser DEADLINE FOR ACTION: N/A

APPROVED:

Department

City Manager

Finance

RECOMMENDATION: DRDINANCE

That the City Council adopt the draft Resolution, thereby approving an Amendment to Specific Plan 10-003; a request to establish standards and procedures for 'casitas' on properties located within of Specific Plan 10-003.

Executive Summary: Cornerstone Developers, Inc. is requesting an amendment to an existing specific plan that would include provisions for the development and construction of 'casita' units in the front yard of R-1 (Single Family Residential) properties. The amendment would allow casitas to be built in the front yard at a reduced setback of 15 feet, rather that the current standard of 20 feet. Properties affected by this amendment are located south of 30th Avenue, west of Santoro Drive, north of McCallum Way and west of DaVall Drive and east of Santoro Road (see attached public hearing notice).

BACKGROUND:

On September 4, 2001, staff received an application to amend Specific Plan 10-003, a plan that was originally approved by the City Council on July 3, 1985. The Specific Plan encompasses approximately 160 acres, located south of 30th Avenue, north of McCallum Way, west of DaVall Drive and east of Santoro Road. The entire area covered by the Specific Plan is currently zoned R-1 (Single-Family Residential). The original purpose of the Specific Plan was primarily to establish circulation, drainage and park needs for the area. A large quantity of land encompassed by this Specific Plan is currently developed with single family residential. Additionally, one tentative tract map was recently approved that will add approximately 88 new residential homes to the area.

ANALYSIS:

The applicant is requesting that the development standards for single family homes in this specific plan area be modified to include a reduction in front yard setbacks to accommodate the construction of casitas. This reduction, when applied to neighborhood developments, can allow a developer to create front courtyards and interesting spaces instead of conforming to the typical front yard and front loaded garage.

City Council Staff Report Re: Specific Plan Amendment 10-003 November 28, 2001 Page 2 of 3

A "casita" is defined as a guesthouse that includes living and restroom facilities although no kitchens are permitted. The addition of a kitchen would change the definition of the structure to a Second Dwelling Unit and would only be permitted with an approved Conditional Use Permit.

This particular amendment would affect a large number of existing residences and a number of vacant lots currently zoned for residential development. If approved, this amendment would allow an existing homeowner within the Specific Plan area to build a casita within their front yard setback. It would also allow developers of vacant property to include an option for a casita for new home developments.

On November 7, 2001, the Planning Commission recommended approval of an amendment to Specific Plan 10-003. The amendment establishes standards and procedures for the development of 'casitas'.

The attached Ordinance provides for the following standards:

- 1. A 'casita' is an attached or detached room on a residential single-family lot that <u>does</u> not provide any kitchen facilities.
- Application for an Administrative Design Review (ADR) shall be submitted to the Planning Department and shall be reviewed and approved by the Architectural Review Committee.
- 3. Landscape plans shall be prepared and submitted to the Planning Department as part of the ADR. Particular attention should be paid to the transition from the public right-of-way to the façade of the casita. Block wall returns shall be installed to enclose the area created between the casita and the main house when applicable. Wall height, color, materials and location shall be subject to review and approval by the Architectural Review Committee.
- 4. Casitas shall not be permitted in rear yards.
- 5. The maximum size of a casita shall be 250 square feet.
- 6. Detached casitas shall maintain a minimum distance of ten (10) feet from any other structure.
- 7. The minimum front yard setback for a casita shall be 15 feet as measured from the property line. The side and rear setbacks, and the lot coverage requirements shall be those established per the residential zone of the property.
- 8. A casita shall provide and maintain consistent architecture of the existing or proposed single family dwelling unit.
- 9. Casitas are prohibited from being used as rental housing units.

ENVIRONMENTAL ANAYLSIS:

On November 7, 2001, the Planning Commission adopted a Negative Declaration for this amendment pursuant to CEQA guidelines. Proper documentation of this action was filed with the County of Riverside Clerk-Recorder on November 15, 2001.

City Council Staff Report Re: Specific Plan Amendment 10-003 November 28, 2001 Page 3 of 3

PUBLIC NOTIFICATION:

The Public Hearing notice was posted and published in The Desert Sun newspaper. In addition, the Public Hearing notice was mailed to all properties and property owners affected by this amendment and all property owners within a 300-foot radius of all properties in question.

ATTACHMENTS:

Exhibit A Draft Resolution

Exhibit B Map of properties affected by Specific Plan 10-003 (Amendment)

ORDINANCE NO. 01-____

SPECIFIC PLAN 10-003 AMENDMENT

A ORDINANCE BY THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY, CALIFORNIA APPROVING AN AMENDMENT TO SPECIFIC PLAN 10-003, ESTABLISHING STANDARDS AND PROCEDURES FOR 'CASITAS' FOR PROPERTY LOCATED SOUTH OF 30TH AVENUE, NORTH OF McCallum Way, West of Davall Drive and East of Santoro Road, in the R-1s (Single-Family Residential with a Specific Plan Overlay) Zone.

WHEREAS, an application to the City of Cathedral City, California ("City"), requesting an amendment to a Specific Plan under the provisions of the Section 18.06.02 of the Cathedral City Zoning Ordinance was initiated by the Cornerstone Developers, Inc. ("Applicant"); and

WHEREAS, said application has been submitted to said City's Planning Commission for recommendation after a properly noticed public hearing was held on November 7, 2001; and

WHEREAS, said application has been submitted to said City's City Council for approval after a properly noticed public hearing was held on November 28, 2001; and

WHEREAS, the applicant is requesting a Specific Plan Amendment to allow for standards and procedures regarding 'casitas' (a detached or attached room on a single-family residential lot) for properties generally located south of 30th Avenue, north of McCallum Way, west of DaVall Drive and east of Santoro Road, in the R1-S (Single-Family Residential with a Specific Plan Overlay) zone.

Section 1. The Planning Commission considered all of the evidence submitted into the administrative record which includes, but is not limited to: a) the Staff Reports prepared for the Planning Commission by the Associate Planner; b) the staff presentation; c) public comments, both written and oral, received and/or submitted at, or prior to, the public hearing/meeting supporting and/or opposing the staff recommendation; and, d) testimony and/or comments from the applicant and its representatives submitted to the City in both written and oral form at, or prior to, the public hearing/meeting.

Section 2. The City Council considered all of the evidence submitted into the administrative record which includes, but is not limited to: a) the Staff Report prepared for the City Council by the Associate Planner; b) the staff presentation; c) public comments, both written and oral, received and/or submitted at, or prior to, the public hearing/meeting supporting and/or opposing the staff recommendation; and, d) testimony and/or comments from the applicant and its representatives submitted to the City in both written and oral form at, or prior to, the public hearing/meeting.

Section 3. Based on the foregoing evidence the City Council finds that:

a) The overall design does relate to the intent and purpose of said General Plan, Zoning Ordinance and to the general nature of the area in which the development is City Council Ordinance Specific Plan 10-003 (Amendment) Page 2 of 3

located.

The development standards and review procedures established for casita units, providing standards for maximum unit size, building setbacks, placement, restrictions on use, and review by the Architectural Review Committee will insure that the 'casita' units are compatible with the low density residential character of the neighborhood, within Specific Plan 10-003.

NOW, THEREFORE, LET IT BE RESOLVED, that the City Council of the City of Cathedral City does approve Specific Plan Amendment 10-003, a request to allow casitas within the front yard setback of properties located within Specific Plan 10-003, as follows:

Add Letter "a." under Section 2:

- a. A 'casita' unit is permitted on single-family residential lots within Specific Plan 10-003 under the following provisions:
 - 1. A 'casita' is an attached or detached room on a residential single-family lot that does not provide any kitchen facilities.
 - Application for an Administrative Design Review (ADR) shall be submitted to the Planning Department and shall be reviewed and approved by the Architectural Review Committee.
 - 3. Landscape plans shall be prepared and submitted to the Planning Department as part of the ADR. Particular attention should be paid to the transition from the public right-of-way to the façade of the casita. Block wall returns shall be installed to enclose the area created between the casita and the main house when applicable. Wall height, color, materials and location shall be subject to review and approval by the Architectural Review Committee.
 - 4. Casitas shall not be permitted in rear yards.
 - 5. The maximum size of a casita shall be 250 square feet.
 - 6. Detached casitas shall maintain a minimum distance of ten (10) feet from any other structure.
 - 7. The minimum front yard setback for a casita shall be 15 feet as measured from the property line. The side and rear setbacks, and the lot coverage requirements shall be those established per the residential zone of the property.
 - 8. A casita shall provide and maintain consistent architecture of the existing or proposed single family dwelling unit.
 - 9. Casitas are prohibited from being used as rental housing units.

Section 4. SEVERABILITY

The City Council declares that, should any portion, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

City Council Ordinance Specific Plan 10-003 (Amendment) Page 3 of 3

Section 4. EFFECTIVE DATE

This ordinance shall take effect 30 days following passage by the City Council and shall supersede any conflicting provision of any Cathedral City ordinance.

Section 5. POSTING

The City Clerk shall, within 15 days after the passage of this Ordinance, cause it to be posted in at least the three (3) public places designated by resolution of the City Council; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

The foregoing Ordinance was approved and adopted at a meeting of the City Council held on November 28, 2001 by the following vote:

Ayes: Noes: Abstain: Absent:	
	George Stettler, Mayor
ATTEST:	
Donna Velotta, City Clerk	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
Steve Quintanilla, City Attorney	Cynthia S. Kinser, City Planner
R	EVIEWED:
 Donald E. E	Bradley, City Manager



Notice of Public Hearing and Environmental Determination

This may affect your property. Please read.

Notice is hereby given that a Public Hearing will be held by the City Council of the City

of Cathedral City on the following item(s):

CASE:

Specific Plan Amendment 10-003

APPLICANT:

Cornerstone Developers, Inc.

OWNER:

Various

REPRESENTATIVE: Mike Marix

LOCATION:

All properties bounded by 30th Avenue,

DaVall Drive, McCallum Way and Santoro

Drive.

PROPOSAL:

A request to amend an existing Specific Plan to allow "casitas" or quest units, in the front yard

allow "casitas" or guest units, in the front ya

setbacks within Specific Plan 10-003.

ENVIRONMENTAL

DETERMINATION: Negative Declaration

STAFF RECOMMENDATION: Approval

Any person interested in any listed proposal can contact the Community Development Department, Planning Division, at 68-700 Avenida Lalo Guerrero, Cathedral City, California, during normal business hours (7:00 a.m. to 6:00 p.m., Monday through Thursday) or may telephone (760) 770-0345 for further information. The environmental findings, project application, and other supporting documents will be available for public inspection at the above address.

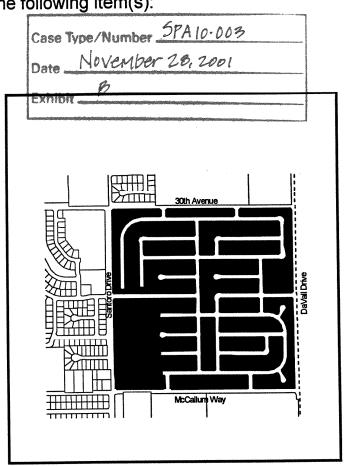
In the case of Public Hearing items, any person may also appear and be heard in support of or opposition to the project or recommendation of adoption of the Environmental Determination at the time of the Hearing.

The City Council, at the Hearing or during deliberations, could approve changes or alternatives to the proposal or the environmental determination.

If you challenge any of these items in court, you may be limited to raising only those items you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the Public Hearing.

NOTE TO THE PUBLIC:

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITY ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT DONNA VELOTTA, CITY CLERK, AT (760) 770-0372. NOTIFICATION 48 HOURS PRIOR TO THE MEETING WILL ENABLE THE CITY TO MAKE REASONABLE ACCOMMODATIONS TO ENSURE ACCESSIBILITY TO THIS MEETING. {28CFR35.104 ADA TITLE II}



LOCATION N CITY COUNCIL HEARING

City Council Chambers, City Hall 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234

DATE AND TIME: Nov. 28, 2001 at 7:30 PM

CONTACT PLANNER: Cynthia Kinser

PHONE: (760) 770-0370



REDEVELOPMENT AGENCY CITY OF CATHEDRAL CITY AGENDA REPORT

SUBJECT: APPROVAL OF A RESOLUTION DECLARING THE INTENT OF THE AGENCYTO PERMIT REIMBURSEMENT OF EXPENDITURES FOR CERTAIN DOWNTOWN HOTEL PROJECT COSTS FROM THE PROCEEDS OF CERTAIN OBLIGATIONS AND DIRECTING CERTAIN ACTIONS

DEPARTMENT: Economic Development MEETING DATE: Dec 12,, 2001 CONTACT PERSON: Paul Shillcock DEADLINE FOR ACTION: Dec 12, 2001

APPROVED:

Department

Executive Director

Finance

RECOMMENDATION:

That the Redevelopment Agency Board adopt Resolution No._____, declaring the intention of the Agency to reimburse expenditures from proceeds of certain obligations and directing certain actions.

BACKGROUND:

The United States Treasury regulations require that certain procedures be implemented in order for a public agency to reimburse itself (or closely related agencies) from bond proceeds for expenditures incurred in relation to a proposed project. One of the required procedures is for the Agency to inform the public of its intention to reimburse itself through the adoption of a resolution. The referenced resolution must set forth:

- a. A specific reference to income tax regulation Section 1.150-2.
- b. A brief general description of the proposed project.
- c. The maximum principal amount of the "obligations"

While a resolution as attached signals the intent of the Agency to be reimbursed for certain expenditures trom bond proceeds, it does not obligate the Agency to do so now or in the future.

DISCUSSION:

For some months, staff has been working to move a proposed downtown hotel/conference center project from conception to reality. To do so has required the commitment of certain Agency funds to cover the cost of appraisals, attorney's fees, required consultants, etc.

RESOLUTION NO. R-	
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A RESOLUTION OF THE CATHEDRAL CITY REDEVELOPMENT AGENCY DECLARING THE INTENT OF THE AGENCY TO PERMIT REIMBURSEMENT OF EXPENDITURES FOR CERTAIN DOWNTOWN HOTEL PROJECT COSTS FROM THE PROCEEDS OF CERTAIN OBLIGATIONS AND DIRECTING CERTAIN ACTIONS

WHEREAS, the Cathedral City Redevelopment Agency ("Agency") proposes to undertake the project referenced below, to cause the issuance of debt for such project and to use a portion of the proceeds of such debt to reimburse expenditures made for the project by the Agency, or by the City of Cathedral City ("City") on its behalf, prior to the issuance of debt: and

WHEREAS, United States Income Tax Regulations Section 1.150-2 provides generally that proceeds of tax-exempt debt may not be used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, one of which is a requirement that, with certain exceptions, prior to the payment of any such expenditure, there be a declaration of intention to reimburse such expenditure; and

WHEREAS, it is in the public interest and for the public benefit that the Agency declare its official intent to reimburse the expenditures referenced herein;

NOW, THEREFORE, the Redevelopment Agency of the City of Cathedral City, California, does hereby Resolve, Declare, Determine, and Order as follows:

- **Section 1.** The Agency intends to cause to be issued obligations ("Obligations") **for** the purpose of financing the costs of constructing a downtown hotel/conference center ("Project") in the downtown core of the City.
- Section 2. The Agency hereby declares that it reasonably expects (I) to pay, or cause the City to pay, certain costs of the Project prior to the date of issuance of the Obligations, and (ii) to use a portion of the proceeds of the Obligations for reimbursement of expenditures for the Project that are paid prior to the date of issuance of the Obligations.

Section 3. The maximum principal amount of the Obligations is \$60,000,000.

APPROVED AND ADOPTED this _	day of December, 2001.
ATTEST:	CHAIR
SECRETARY	
APPROVED AS TO FORM:	APPROVED AS TO CONTENT:
AGENCY COUNSEL	DEPARTMENT HEAD
	REVIEWED:
	EXECUTIVE DIRECTOR



PLANNING DEPARTMENT MEMORANDUM

To:

Mayor and Members of the City Council

From:

Cynthia S. Kinser, City Planner

Date:

December 12, 2001

Subject:

Tentative Tract Map 30256

The public hearing of Tentative Tract Map 30256 was continued from the November 28, 2001 City Council meeting at the request of the applicant. At the November 28th meeting, the public hearing was opened and continued to the December 12, 2001 City Council meeting. There are no updates to the attached staff report.



AGENDA REPORT

for consideration by the CATHEDRAL CITY CITY COUNCIL

Finance

SUBJECT:

RESOLUTION APPROVING TENTATIVE TRACT MAP 30256 SUBDIVIDING APPROXIMATELY 10.05 ACRES INTO 42 SEPARATE PARCELS, LOCATED EAST OF SAN ELJAY AVENUE, SOUTH OF EL CANTO ROAD, NORTH OF BARISTO ROAD AND WEST OF SANTORO DRIVE (APN 670-130-003), IN THE R1-7.2S (SINGLE-FAMILY RESIDENTIAL WITH SPECIFIC PLAN OVERLAY) ZONE.

DEPARTMENT: Planning **MEETING DATE:** November 28, 2001

CONTACT PERSON: Cynthia S. Kinser DEADLINE FOR ACTION: N/A

RECOMMENDATION:

That the City Council adopt the draft Resolution, thereby approving Tentative Tract Map 30256, a request to subdivide approximately 10.05 acres into 42 separate parcels.

EXECUTIVE SUMMARY:

A request to approve a Tentative Tract Map to subdivide 10.05 acres into 42 single-family lots in order to enable the construction of new single family homes. The subdivision is in compliance with current zoning standards. The Planning Commission approved the Negative Declaration and recommended approval for this project on November 7, 2001.

BACKGROUND:

On August 6, 2001, staff received an application for Tentative Tract Map 30256, a request to subdivide approximately 10.05 acres into 42 separate parcels for the purpose of single-family residential home construction. The subject property is located east of San Eljay Avenue, south of El Canto Road, north of Baristo Road and west of Santoro Drive (APN 670-130-003). Properties to the north, south and west are developed with single-family homes, and the property to the west is vacant land.

Staff reviewed the application at the Development Services meetings of August 15, 2001 and September 19, 2001. Comments resulted which were either resolved or included as conditions of approval. After all issues were addressed the project was noticed for public hearing.

At this time model homes have not been submitted. At such time as the model homes are submitted, they will be reviewed by the Architectural Review Committee and Planning Commission.

RESOLUTION NO. P01-

TENTATIVE TRACT MAP 30256

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY, CALIFORNIA, APPROVING TENTATIVE TRACT MAP 30256 TO SUBDIVIDE A SINGLE PARCEL, APPROXIMATELY 10.05 ACRES, INTO 42 SEPARATE PARCELS, LOCATED EAST OF SAN ELJAY AVENUE, SOUTH OF EL CANTO ROAD, NORTH OF BARISTO ROAD AND WEST OF SANTORO DRIVE (APN 670-130-003), IN THE R1-7.2S (SINGLE-FAMILY RESIDENTIAL WITH SPECIFIC PLAN OVERLAY) ZONE.

WHEREAS, an application to the City of Cathedral City, California ("City"), for approval of a Tentative Tract Map under the provisions of the Subdivision Map Act was initiated by the Al Thiessen ("Applicant"); and

WHEREAS, said application has been submitted to said City's Planning Commission for decision after a properly noticed public hearing was held on November 7, 2001; and

WHEREAS, the applicant is requesting a Tentative Tract Map subdivide a single 10.05-acre parcel into 42 separate parcels, located east of San Eljay Avenue, south of El Canto Road, north of Baristo Road and west of Santoro Drive (APN 670-130-003), in the R1-7.2S (Single-Family Residential with a Specific Plan Overlay) zone; and

WHEREAS, the City of Cathedral City acting as Lead Agency has determined that the requested Tentative Tract Map will not have a significant impact on the environment and that Environmental Assessment 01-635 (Negative Declaration) was adopted by the Planning Commission on November 7, 2001.

THE CITY OF CATHEDRAL CITY CITY COUNCIL DOES RESOLVE AS FOLLOWS:

<u>Section 1.</u> The City Council has considered all of the evidence submitted into the administrative record, which includes, but is not limited to the following:

- a) The Staff Report prepared for the City Council by Cynthia S. Kinser, City Planner;
- b) The staff presentation at the City Council meeting held on November 28, 2001;
- c) Public comments, both written and oral, received and/or submitted at, or prior to, the public hearing/meeting supporting and/or opposing the staff recommendation; and
- d) Testimony and/or comments from interested parties including the Applicant and its representatives submitted to the City in both written and oral form at, or prior to, the public hearing/meeting.

Section 2. Based on the foregoing evidence the City Council finds that:

City Council Staff Report Re: Tentative Tract Map 30256 November 28, 2001 Page 2 of 2

On November 7, 2001, the Planning Commission held a public hearing to discuss this project. The Planning Commission voted unanimously to approve the Negative Declaration and recommend that the City Council approval of the Tentative Tract.

ANALYSIS:

The proposed Tentative Tract enables the division of land to provide for single-family home development. The lot is currently zoned R1-7.2-S which allows residential development with a Specific Plan; however, no Specific Plan was adopted for the subject area.

The subject site is zoned for single-family residential development. The zoning designation is R1-7.2 which allows one unit for every 7,200 square feet of net lot area. This zone allows for one single-family dwelling per legal lot, small family day care homes, home occupations and large family day-care homes. The proposed project is consistent with R-1 (Single-Family Residential) development standards.

The minimum lot size for this project is 7,200 square feet as required by the Zoning Ordinance. The proposed application shows lot sizes ranging from 7,270 to 11,874 square feet with an average lot size of 8,485 square feet.

The proposed street layout is compatible with the existing surrounding residential developments. The applicant proposes to extend the existing streets of El Toro Road, Victor Road and Neuma Drive, culminating in cul de sacs, to serve Lots 1 through 30. Lots 31 through 42 would be served by a new cul de sac branching west off of Santiago Road.

ENVIRONMENTAL ANAYLSIS:

Staff completed the initial environmental assessment for this project on September 20, 2001. No significant impacts were identified and a Negative Declaration was proposed. To date, no comments have been received regarding this environmental determination. The public hearing for the proposed Negative Declaration was posted with the County of Riverside as required by State law. The Planning Commission approved the Negative Declaration on November 7, 2001.

PUBLIC NOTIFICATION:

The Public Hearing notice was posted and published in The Desert Sun newspaper. In addition, the Public Hearing notice was mailed to all properties and property owners within a 300-foot radius of the property in question.

ATTACHMENTS:

Exhibit A Draft Resolution

Exhibit B Tentative Tract Map 30256
Exhibit C Public Hearing Notice

Section 2. Based on the foregoing evidence the City Council finds that:

a) The City Council found that the proposal substantially complies with all applicable requirements of the Cathedral City Municipal Code, General Plan and Zoning Ordinance:

The Tentative Tract Map is allowed in the R1-7.2S zone. All required improvements not shown on the Tentative Tract Map exhibit are required as listed in the Conditions of Approval. With the approval and mitigating conditions, the project is compatible with the General Plan, Municipal Code and Zoning Ordinance.

b) The overall design relates to the intent and purpose of said General Plan, Zoning Ordinance and to the general nature of the area in which the development is located.

The project area is adjacent to other single-family residential uses. The proposed tract map is for the purposes of single-family home development and is complimentary to the intent and purpose of all regulatory codes.

c) The development provides for adequate public facilities and improvements.

All public facilities as required to sustain development on the site have been or will be provided by the Applicant as a condition of approval. Curb, gutter and sidewalk and City approved landscaping will be constructed for the property frontages along all streets.

Section 3. FEES, DEDICATIONS, RESERVATIONS, AND OTHER EXACTIONS

- 1. The adopted Conditions of Approval for Tentative Tract Map 30256 incorporated here, may include dedications, reservations, and exactions pursuant to Government Code Section 66020 (d)(1).
- 2. The City expressly reserves the right to establish, modify or adjust any fee, dedication, reservation or other exaction to the extent permitted and as authorized by law.

Pursuant to Government Code Section 66020(d)(1), NOTICE IS FURTHER GIVEN that the 90 day period to protest the imposition of any impact fee, dedication, reservation, or other exaction described in this resolution begins on the effective date of this resolution and any such protest must be in a manner that complies with Section 66020(a) and failure to timely follow this procedure will bar any subsequent legal action to attack, review, set aside, void or annul imposition.

The right to protest the fees, dedications, reservations, or other exactions does not apply to planning, zoning, grading, or other similar application processing fees or service fees in connection with this project and it does not apply to any fees, dedication, reservations, or other exactions of which you have been given a notice similar to this nor does it revive challenges to any fees for which the Statute of Limitations has previously expired.

DESCRIPTION	CURRENT FEE/CALCULATION FORMULA	ESTIMATED FEE
Police, Fire, Facilities	\$150.00 per 1,000 square foot	Unknown
& Signalization	Increment (under roof)	
Fringe-Toed Lizard	\$100.00 per acre	\$4,000
Mitigation Fee		
Master Underground	\$.15 per square foot	Unknown
Plan	of area under roof structure	
Transportation Uniform	\$794.31 per each	\$102,465.99
Mitigation Fee	residential unit	
Transit Development	\$5.00 per linear foot of frontage on	\$13,195.15
Fee	major or arterial streets	

<u>Section 4.</u> In view of all the evidence, and based on the foregoing findings, the City Council hereby resolves as follows:

- a) That the City Council of the City of Cathedral City, California, does approve Tentative Tract Map 30256 to subdivide an approximate 10.05-acre parcel into 42 separate parcels, located east of San Eljay Avenue, south of El Canto Road, north of Baristo Road and west of Santoro Drive (APN 670-130-003), in the R1-7.2S (Single-Family Residential with Specific Plan Overlay) zone, subject to the following conditions of approval:
- 1. The development of the property shall conform substantially with that approved Exhibit B dated November 7, 2001, except as specifically modified by any of the conditions listed in this Resolution.
- 2. The development of the premises shall conform to all Ordinances, codes, regulations, specific plan(s), policies and development design controls pursuant to the Cathedral City Municipal Code taking effect prior to issuance of any building permits.
- 3. Approval of the referenced exhibit is preliminary only. All final working drawings shall be submitted to the Planning Department prior to issuance of building permits. Said plans shall include but not be limited to sidewalk/hardscape details, final landscaping, wall design and irrigation plans, exterior lighting plans, signage and utility plans.
- 4. This map shall be recorded within two years after final action by the City Council, otherwise this Tentative Tract Map shall become null and void unless otherwise provided by Resolution. "Recorded" for the purposes herein is defined as legally recorded with the County of Riverside, Office of the Assessor.

November 28, 2001, TTM 30256 Resolution Page 4 of 6

- 5. All conditions herein shall be met prior to issuance of a building permit or occupancy clearance permit as determined by the City Planner.
- 6. On-site fire-fighting water shall be available to within 150 feet of all combustibles with a delivery capability of 1,500 gallons per minute flow for a two-hour duration for Type V-N construction.
- 7. Access roadways to within 150 feet of all combustibles shall be maintained with a minimum of 20 feet clearance and a certified compaction test of 95 percent. The surface may be of compacted soil.
- 8. During excavation of access roads, secondary access roadways shall be maintained to 150 feet of all combustibles. All secondary access roads shall meet the minimum standards as listed above.
- 9. At any time during construction, when combustibles are on-site and conditions 6 through 8 are not being adhered to, the construction will be halted with a Stop Work Order until such time that these conditions are met. In accordance with Section 8.04.080 of the Cathedral City Municipal Code, a violation of a Stop Work Order is a violation of the Building Code and is a misdemeanor punishable by a fine of up to \$1,000.00 and/or six months imprisonment.
- 10. All residences within the subdivision shall be protected with a NFPA 13D Fire Sprinkler System.
- 11. Development of a model complex will require a separate Design Review application to be approved by the Planning Commission.
- 12. Perimeter walls and landscape plans shall be submitted to the Planning Department for review and approval prior to issuance of any building permits. All interior street side yards shall be landscaped in accordance with a plan to be approved by the Planning Department. The Applicant shall work with the Planning Department and shall submit alternative drought tolerant landscaping options for the front yards of the homes to be developed.
- 13. All the public street dedications and other required public rights of way shall be made either by final map or by separate instrument, prior to final map approval. All streets shall be dedicated to the width shown on the approved tentative map.
- 14. The public and private streets and facilities in and adjacent to the tract shall be designed by a registered civil engineer, meeting City standards and provisions, subject to the approval of the City Engineer, and constructed as follows:
- 15. City standard street lights shall be constructed on all public streets, and approved street name signs shall be installed on all streets.
- 16. All interior streets shall be constructed with curb and gutter and pavement providing a minimum width of 40 feet between curbs.
- 17. The proposed cul-de-sac shall be improved with pavement and a 38-foot (minimum) curb radius.

November 28, 2001, TTM 30256 Resolution Page 5 of 6

- 18. Sanitary sewers shall be installed in the tract, and a water and fire protection system shall be installed, all meeting local water district and Fire Marshal standards.
- 19. All streets shall be improved with concrete sidewalks, five feet wide. Sidewalks on the interior streets shall be located against the property line to provide a parkway strip between the sidewalk and curb. Sidewalks on all streets shall be improved with street lights.
- 20. Fire protection facilities shall be provided as required by the City Fire Marshall in accordance with a Water System Plan designed by a California Registered Engineer and approved by the Coachella Valley Water District prior to delivery of combustible materials to the site.
- 21. Each unit designated by the City Fire Marshall shall be equipped with an integral fire sprinkler system per the current Uniform Building and Fire Codes.
- 22. All on-site electrical, telephone, gas, cable television and other such similar utilities shall be provided at the developer's cost and shall be installed underground. Notification to all utility companies must be performed prior to construction.
- 23. All public utility easements shall be offered for dedication and shown on the final map.
- 24. A grading and drainage plan shall be prepared for the approval of the City Engineer before any site grading, clearing, or scarification takes place. A blow sand/PM10 plan per the current AQMD standards and erosion control plan shall also be prepared for City approval, before any grading begins.
- 25. If the tract is graded and then built in phases, the areas of grading where no building is occurring shall be covered with an approved dust preventive substance or planting, and the area shall be barricaded to deter vehicular use. A Notice of Intention and other approvals as required by the State Water Quality Control Board and Southern California Air Quality Management District shall be obtained prior to grading. If the tract is to be graded and developed in phases, then the subdivider shall post a \$5,000 cash bond with the City Engineer's office to assure compliance with the blow sand regulations.
- 26. At no time will the existing residential streets at the tract entrances be allowed to be used for construction staging, storage or other such construction related activities. Access by heavy equipment shall be limited to the minimum number of trips essential to completing the construction. Any damage to the existing public roadways, sidewalks or other infrastructure shall be repaired or replaced by the developer's contractor at his own expense, as directed by the City Engineer.
- 27. If the tract map is recorded and developed in phases, the City Engineer reserves the right to require additional dedications and improvements outside any phase or increment to assure that each phase or map increment is properly served with utilities and with proper traffic circulation.

November 28, 2001, TTM 30256 Resolution Page 6 of 6

- 28. If the tract is built in phases, barricades shall be constructed at the temporary deadends of the streets to prevent access to the graded or undeveloped portions of the tract.
- 29. Prior to final map approval, all of the required dedications shall be made, and all of the required improvements shall either be constructed, or guaranteed to be constructed, within a time certain, by the subdivider's execution of a subdivision agreement, in a form approved by the City Attorney, secured with sufficient improvement securities to guarantee the installation of the required improvements, and a monument bond to assure monumentation and submittal of centerline ties.
- 30. Prior to final map approval, the subdivider shall present evidence to the City Engineer's office that financial arrangements have been made to serve the entire tract with sewer and water service, and that all rights of way and other off-site approvals have been granted in order to construct these systems.
- 31. Prior to final map approval, the subdivider/property owner shall execute a recordable covenant requesting the annexation to a Landscape and Lighting District, to cover the ongoing maintenance, of general benefit landscape and lighting areas maintained by the City. The owner shall submit a letter of request and process annexation into the LLD concurrently with map approval by City Council.
- 32. Prior to final map approval, all proposed street names shall be approved by the City and shown on the final map.

<u>Section 5.</u> The Secretary to the City Council shall certify as to the adoption of this resolution and shall cause the same to be processed in the manner required by law.

PASSED AND APPROVED on this 28th day of November, 2001.

Mayor George Steriler

Source

Attest:

Approved as to Form:

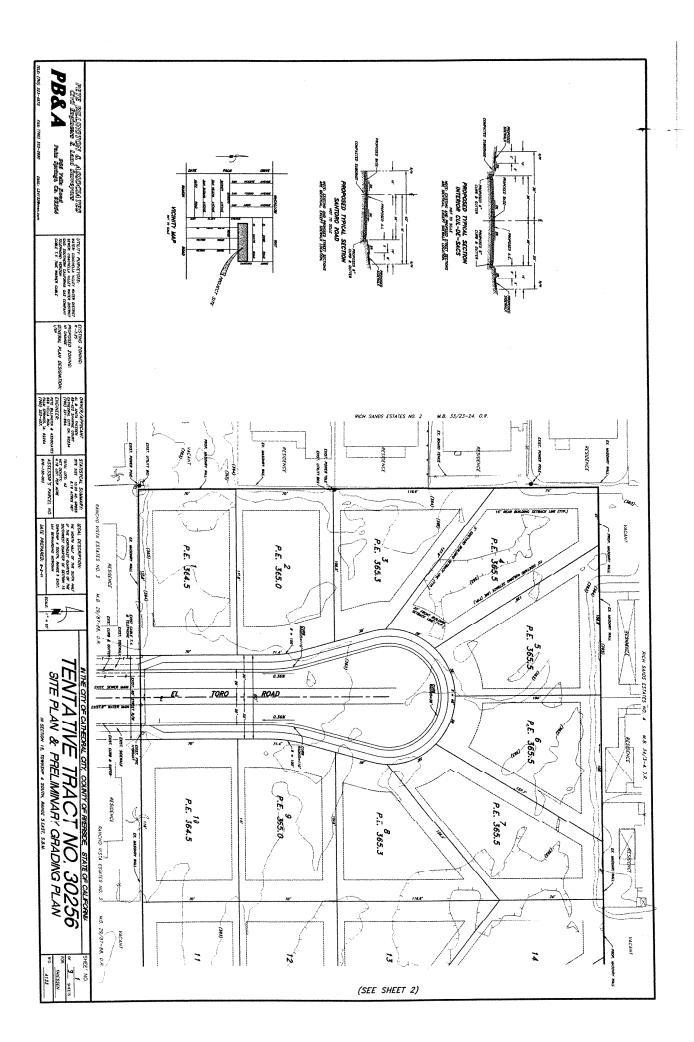
Approved as to Content:

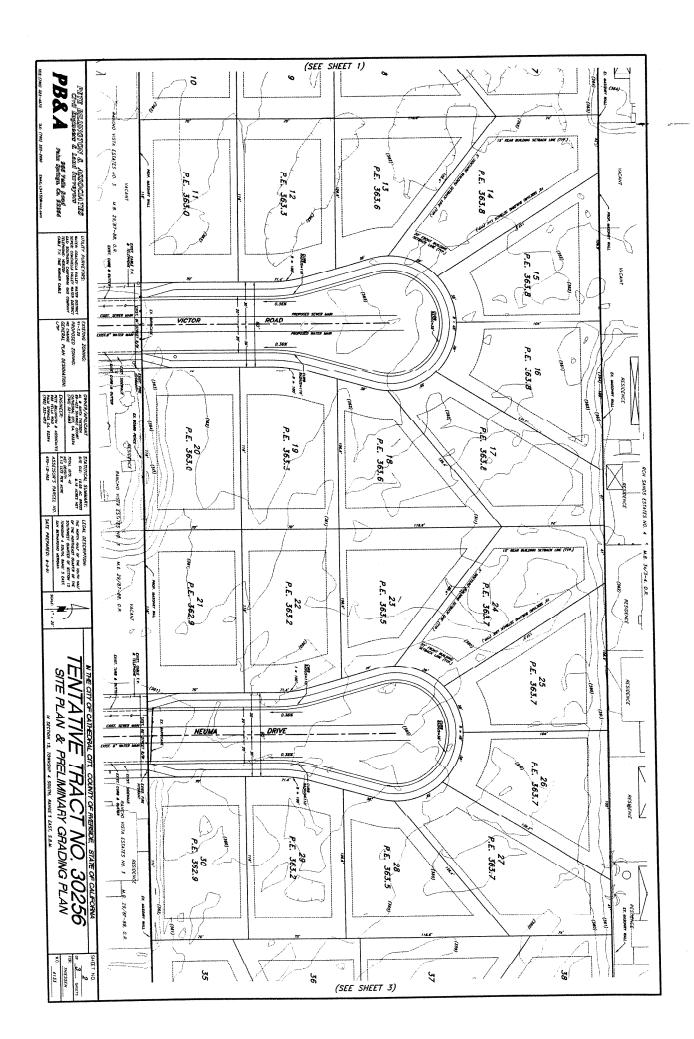
City Attorney

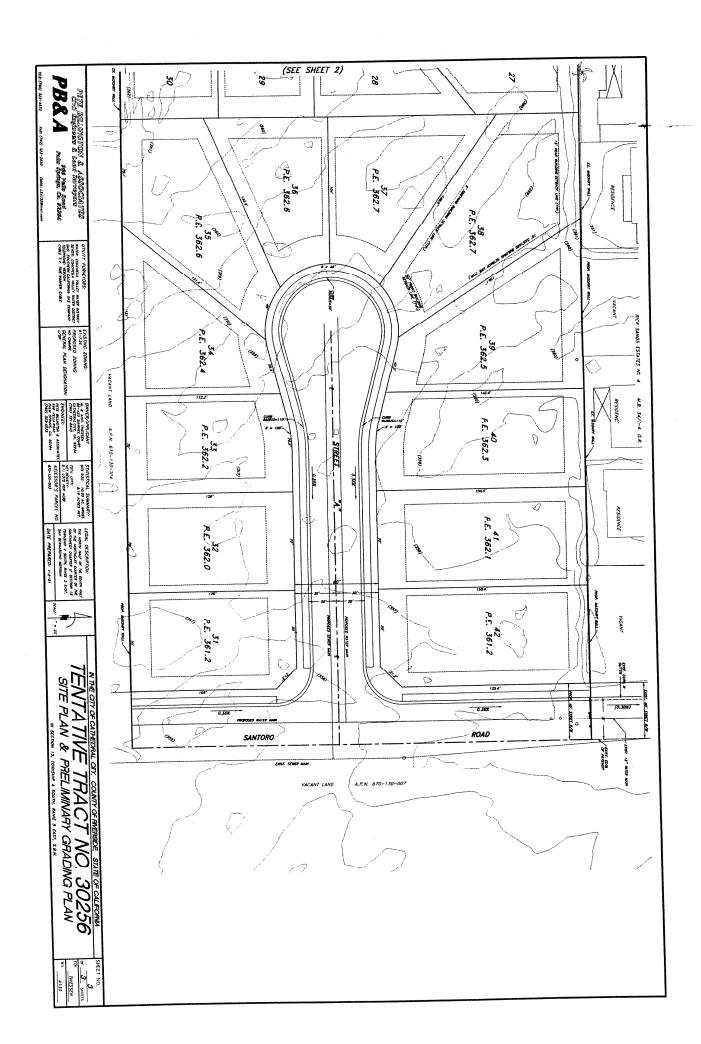
€ity Planner

City Manager

Approved:









Notice of Public Hearing & Environmental Determination

This may affect your property. Please read. Notice is hereby given that a Public Hearing will be held by the City Council of the City of Cathedral City on the following item(s):

CASE:

Tentative Tract Map 30256

APPLICANT:

Al Thiessen

OWNER:

Al Thiessen

REPRESENTATIVE: Al Thiessen

LOCATION:

East of San Eljay Avenue, south of El Canto Road, north of Baristo Road and west of

Santoro Drive (APN 670-130-003)

PROPOSAL:

A request to subdivide 10.05 acres into 42 lots

for the purpose of single family home

construction.

ENVIRONMENTAL

DETERMINATION: Negative Declaration

STAFF RECOMMENDATION: Approval

Any person interested in any listed proposal can contact the Community Development Department, Planning Division, at 68-700 Avenida Lalo Guerrero, Cathedral City, California, during normal business hours (7:00 a.m. to 6:00 p.m., Monday through Thursday) or may telephone (760) 770-0374 for further information. The environmental findings, project application, and other supporting documents will be available for public inspection at the above address.

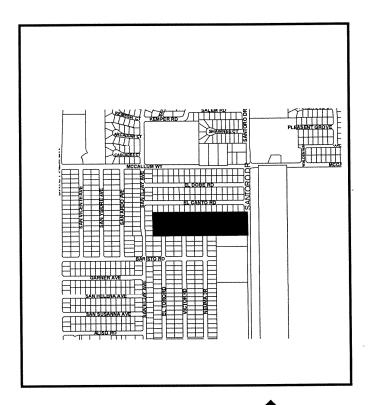
In the case of Public Hearing items, any person may also appear and be heard in support of or opposition to the project or recommendation of adoption of the Environmental Determination at the time of the Hearing.

The City Council, at the Hearing or during deliberations, could approve changes or alternatives to the proposal or the environmental determination.

If you challenge any of these items in court, you may be limited to raising only those items you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the City Council, or prior to, the Public Hearing.

NOTE TO THE PUBLIC:

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITY ACT, IF YOU NEED SPECIAL ASSISTANCE PARTICIPATE IN THIS MEETING, PLEASE CONTACT DONNA VELOTTA, CITY CLERK, AT (760) 770-0322. NOTIFICATION 48 HOURS PRIOR TO THE MEETING WILL MAKE REASONABLE ENABLE TO THE CITY ACCOMMODATIONS TO ENSURE ACCESSIBILITY TO THIS MEETING. {28 CFR 35.104 ADA TITLE II}



LOCATION CITY COUNCIL HEARING

City Council Chambers, City Hall 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234

DATE AND TIME: November 28, 2001 at 7:00

PM

CONTACT PLANNER: Kim Chafin

PHONE: (760) 770-0339

CITY OF CATHEDRAL CITY AGENDA REPORT

SUBJECT: Redevelopment Project Area No. 1 Plan Amendment Project

Area Committee Election

DEPARTMENT: Redevelopment

MEETING DATE: December 12, 2001

DEADLINE FOR ACTION: December 19, 2001

CONTACT PERSON? Susan Moeller

APPROVED: 1/Ockey 1. Some

Redevelopment Executive Director Finance

RECOMMENDATION:

Adopt a resolution (1) finding that the adopted procedures were followed in the election of the Project Area Committee; (2) approving a representative Project Area committee in connection with the Fourth Amendment to the Redevelopment Plan for Redevelopment Project Area No. 1; and (3) directing the Redevelopment Agency to consult with the Project Area Committee.

BACKGROUND:

The City and its Redevelopment Agency adopted three different redevelopment plans that have now covered most of the City of Cathedral City. Project Area Number 1, covering the area proximate to Downtown and East Palm Canyon Drive was adopted on November 29, 1982, Project Area Number 2, covering the Panorama and Ramon Road Corridor between Date Palm Drive and Shifting Sands Trail/Avenida La Paloma was adopted on November 29, 1983, and Project Area Number 3, covering the rest of the City north to Interstate 10 and Section 3 east of Date Palm Drive. On December 17, 1997, Project Area Number 1 and Project Area Number 2 were merged to allow for better utilization of the tax increment financing mechanism.

On June 6, 2001, staff recommended to the Planning Commission the selection of certain Project Area Boundaries and formulation of a Restated Preliminary Plan. The Planning Commission instead recommended to the City Council that the boundaries of Project Area No. 1 remain as currently established.

On July 11, 2001, the Redevelopment Agency Board met in closed session to discuss potential litigation related to the Agency's Redevelopment Plan Amendment proposals. During the discussion, the Agency Board came to the

conclusion that the boundaries of Redevelopment Project Area No. 1 should be reconsidered to include the proposed hotel and timeshare project covered by a Memorandum of Understanding with BCN Development; and the area bounded by Terrace Drive on the south, Chuperosa Lane on the west, H Street on the north, and the East Cathedral Canyon Wash; currently occupied with a mobile home park. The second phase of the BCN project would require the Agency to use its best efforts to assemble land that is currently not available to the Agency through eminent domain.

Staff mailed notices regarding the proposed public meetings and the August 22, 2001, City Council meeting to all property owners of record, residents and businesses within the previously notified areas on Thursday, July 19. Public meetings to gather public input were held on July 31 and August 7, 2001 and Spanish translation services were provided. Approximately 45 people attended the first meeting and approximately 25 people attended the second meeting. At those meetings, the process for amending the Redevelopment Plan and the process for acquiring property for public and redevelopment purposes was explained. In addition, the importance to the City for completing the BCN hotel project was discussed. People in the audience asked a number of questions, most of them centering on the specific boundaries of the proposed amendments, the acquisition process and how individuals might be affected by the proposed actions. There was one expression of opposition with the proposed amendments to Project Area No.1 that would extend the use of eminent domain shared with staff at the conclusion of the meeting.

On September 19, 2001, the Planning Commission of the City of Cathedral City approved a restated Preliminary Plan for Project Area No. 1 and selected a Project Area for the Fourth Amendment to the Redevelopment Plan for Project Area No. 1. The action by the Planning Commission is the first required action for the amendment of the Redevelopment Plan for Project Area No. 1 in order to extend and/or reinstate eminent domain authority. It is not required that new Preliminary Plans be adopted for the amendments to Project Areas No 2 and No. 3 as those amendments will not potentially affect low-and moderate-income residents.

On October 24, 2001, the City Council met and called for the formation of a Project Area Committee (PAC). Notices were published in the paper and sent to property owners of record, occupants (both residential and business) and community organizations with Project Area No. 1 and the proposed Added Area, outlining time and location for:

- October 24, 2001 City Council meeting calling for the formation of a PAC.
- 2. October 29, 2001 Public information meeting to provide general information on the redevelopment and plan amendment process.

- 3. November 6, 2001 Public information meeting to provide specific information on becoming a candidate for election to the PAC and how to vote in the election.
- 4. December 12, 2001 City Council consideration of ratification of the PAC election and consideration of any protests as to the PAC election.

The notice, as mailed out, established the Parrish Hall of St. Louis Church as the meeting place for the public information meetings and the PAC election. After the notices went out, staff was notified that the Parrish Hall would no longer be available. Subsequent notices were sent out changing the venue of the meetings and election to the City Hall Study Session room. A clerical error in these subsequent notices misstated the dates for the final information meeting, election and City Council ratification as November 1. An additional notice was sent correcting the dates and providing information on how to qualify for voting and becoming a candidate for PAC membership.

The City's Redevelopment consultant conducted the proceedings and Spanish translation services were available at all of the proceedings, provided by both City staff and attendees.

Attendance at the public meetings and elections were as follows:

- Public Information Meeting October 29 7 persons
- Public Information Meeting November 6 37 persons
- Election November 19 25 persons

The election resulted in the election of eight (8) people to the PAC. One seat remains vacant, as there were not sufficient candidates to fill all three (3) community organization seats. The PAC procedures provide that the PAC may fill vacant seats by appointment of qualified candidates. Attachment 1 lists the people elected to the PAC by category.

ANALYSIS:

Based upon a review of the process by the City's Redevelopment consultant and Agency Counsel, the election appears to be valid. However, the City Clerk has received two protests of the election. Those protests were received Monday, December 3 and staff and Agency Counsel were still preparing responses to the protests at the time the staff Reports were submitted for publication. The protests and responses will be available to the Council under separate cover prior to the City Council meeting. The City Council must make a finding with respect to the protests within thirty (30) days of the election.

FISCAL IMPACT: None with this action.

Attachments: Attachment 1. Elected PAC members

Attachment 2. Council Resolution

PAC MEMBERS

NAME			
LAST	FIRST	CATEGORY	REPRESENTING
ADAMS	JACK	BUSINESS	
BECK	WILLIAM	BUSINESS	
			CATHEDRAL CITY
			COMMUNITY
HILLERY	ROBERT	COMMUNITY ORGANIZATION	CHURCH
			CATHEDRAL CITY
			CHAMBER OF
HOWELL	GARY	COMMUNITY ORGANIZATION	COMMERCE
MARIN	MARTA	RESIDENTIAL TENANT	
PARISH	GREG	RESIDENTIAL OWNER OCCUPANT	
ROMERO	SALVADOR	RESIDENTIAL TENANT	
	CATALINA		
SIFUENTES	(LUPE)	RESIDENTIAL OWNER OCCUPANT	

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY FINDING THAT ADOPTED PROCEDURES WERE FOLLOWED IN THE ELECTION OF THE PROJECT AREA COMMITTEE; APPROVING A REPRESENTATIVE PROJECT AREA COMMITTEE IN CONNECTION WITH THE FOURTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR REDEVELOPMENT PROJECT AREA NO. 1; AND DIRECTING THE REDEVELOPMENT AGENCY TO CONSULT WITH THE PROJECT AREA COMMITTEE

WHEREAS, the City Council of the City of Cathedral City ("City Council") on November 29, 1982, by Ordinance No. 39 approved and adopted the Redevelopment Plan for Redevelopment Project Area No. 1; and

WHEREAS, the City Council on November 30, 1984, by Ordinance No. 91 approved and adopted the Redevelopment Enabling Plan for Redevelopment Project No. 3; and

WHEREAS, the City Council proposes to amend the Redevelopment Plan for Redevelopment Project Area No. 1 and Redevelopment Project No. 3 to, among other things, delete certain property from Redevelopment Project No. 3 and add the deleted property to Redevelopment Project Area no. 1 ("Fourth Amendment Area"); and

WHEREAS, the Planning Commission of the City of Cathedral City has, on 19, 2001, by Resolution No. P01-941, selected the boundaries of the Fourth Amendment Area and formulated and approved a Preliminary Plan for the Fourth Amendment Area; and

WHEREAS, the Redevelopment Agency of the City of Cathedral City ("Redevelopment Agency") has prepared a proposed fourth amendment ("Fourth Amendment") to the Redevelopment Plan for Redevelopment Project Area No. 1; and

WHEREAS, in connection with the proposed Fourth Amendment, and following a duly noticed public hearing, the City Council adopted Resolution No. 2001-72 on October 24, 2001, in which the City Council called for the formation of a Project Area Committee ("PAC") and adopted a procedure for formation of a Project Area Committee ("Procedure for Formation of Project Area Committee and Communitywide Procedures for Election of Members Thereof for Redevelopment Project Area No. 1 and the Fourth Amendment Area to be Added Thereto," or "Procedure") for the Existing Redevelopment Project Area No. 1 ("Existing Project Area") and the proposed Fourth Amendment Area to be composed of nine (9) members; and

WHEREAS, on November 6, 2001, a duly noticed public meeting was conducted for the purpose of providing information to the community about the proposed Fourth Amendment and to explain the establishment of, functions of, and opportunity to serve on the PAC: and

- **WHEREAS**, on November 19, 2001, a duly noticed public meeting was held to conduct elections for PAC membership for the Existing Project Area and the proposed Fourth Amendment Project Area; and
- **WHEREAS**, at said election meeting, eight (8) members of the PAC were duly elected by certified area residents, property owners, businessowners, and community organizations; and
- **WHEREAS**, notwithstanding the publication and mailing of the notices of the above mentioned meetings and other canvassing efforts to encourage participation, not all PAC positions were filled; and
- **WHEREAS**, the Procedure further provides that the existence of any vacancies on the PAC shall not prevent the PAC from carrying out its duties as required by law, and that any vacant positions may be filled by the PAC; and
- WHEREAS, the Procedure provides the opportunity to file with the City Council written challenges to the election or electoral process, stating the facts of the situation and the reasons why it is being challenged, not more than 15 days following the election; and
- **WHEREAS**, written challenges to the election or the electoral process were received and reviewed by the Redevelopment Agency staff.
- **NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Cathedral City as follows:
- <u>Section 1.</u> The City Council hereby finds that all adopted procedures as contained in the "Procedure for Formation of Project Area Committee and Communitywide Procedures for Election of Members Thereof for Redevelopment Project Area No. 1 and the Fourth Amendment Area to be Added Thereto" were followed in the election of the Project Area Committee in connection with the Fourth Amendment to the Redevelopment Plan for Redevelopment Project Area No. 1.
- <u>Section 2.</u> The City Council hereby approves, as representative of the Project Area, the membership of the Project Area Committee for Redevelopment Project Area No. 1 comprised of those persons from the Existing Project Area and the Fourth Amendment Area identified on the list of PAC members attached hereto, labeled Exhibit "A" and incorporated hereby by reference.
- <u>Section 3.</u> The City Council hereby finds no substantial merit to the written challenges received by the Redevelopment Agency staff, and overrules any and all objections on the election or the electoral process.
- <u>Section 4.</u> The Redevelopment Agency of the City of Cathedral City and its staff are directed to consult with and obtain the advice of the Project Area Committee concerning those policy matters which deal with the planning and provision of residential facilities or replacement housing for those to be displaced by Project activities and other

matters which affect the residents of the Project Area while preparing the Redevelopment Plan and for a period of three years after adoption of the Redevelopment Plan.

PASSED, APPROVED AND ADOP	TED this day of, 2001.
	George Stettler, Mayor
ATTEST:	
City Clerk	
APPROVED AS TO FORM	APPROVED AS TO CONTENT
Green, DeBortnowsky & Quintanilla	Susan Moeller, Redevelopment Director
REVIEWED	
Donald Bradley, City Manager	

EXHIBIT "A"

PROJECT AREA COMMITTEE FOR THE FOURTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR REDEVELOPMENT PROJECT AREA NO. 1

CATHEDRAL CITY DOWNTOWN FOUNDATION AGENDA REPORT

SUBJECT: Adoption of By Laws and ratification of Employment Agreement

DEPARTMENT: Redevelopment

MEETING DATE: December 12, 2001 DEADLINE FOR ACTION: N/A

CONTACT PERSON: Susan Moeller

APPROVED: 1. 10lly 13-1. mily

Redevelopment Executive Director Finance

RECOMMENDATION:

Approve the By Laws of the Cathedral City Downtown Foundation and ratify an Employment Agreement with Ed Basaillon for management of the IMAX Theater.

BACKGROUND:

On December 21, 2000 the City Council approved, in Closed Session, the formation of the Cathedral City Downtown Foundation and an Employment Agreement with Ed Basaillon for the management of the IMAX Theater. Articles of Incorporation were filed with the California Secretary of State in December 2000.

ANALYSIS:

An important step in completing the incorporation process is establishing By Laws. The attached By Laws of the Cathedral City Downtown Foundation were drafted by the City Attorney and reviewed by staff.

The By Laws provide that the Foundation shall be a California Non Profit Public Benefit Corporation, and that the Directors shall be the members of the City Council. The specific purposes of the Foundation is to operate educational facilities and/or attractions in the Downtown area of the City, to instruct the public on subjects useful to the individual and beneficial to the community, and to encourage and raise monetary and/or in lieu contributions via gifts, endowments and bequests for the purpose of enhancing and/or improving those services, facilities and equipment currently provided by the IMAX Theater located in the City of Cathedral City. The annual meeting of the Foundation will be held in July of each year.

FISCAL IMPACT:

None with this action.

ATTACHMENTS: By Laws

Employment agreement

BYLAWS

OF

CATHEDRAL CITY DOWNTOWN FOUNDATION, A California Nonprofit Public Benefit Corporation

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BYLAWS

OF

CATHEDRAL CITY DOWNTOWN FOUNDATION, A California Nonprofit Public Benefit Corporation

ARTICLE I

1. OFFICES.

- 1.1. <u>Name of Organization</u>. The name of this Corporation is the Cathedral City Downtown Foundation.
- 1.2. <u>Principal Office</u>. The principal office for the transaction of the activities and affairs of this Corporation is located at 68-700 Avenida Lalo Guerrero, Cathedral City, California 92234, in the County of Riverside, California. The Board of Directors may, from time to time, change the principal office of the Corporation from one location to another within the City of Cathedral City, County of Riverside, California. Any such change shall be noted by the Secretary in these Bylaws, but shall not be considered an amendment of these Bylaws.

ARTICLE II

PURPOSES AND LIMITATIONS.

- 2.1. <u>General Purposes</u>. This corporation is a nonprofit public benefit corporation organized exclusively for public and charitable purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).
- 2.2. <u>Specific Purposes</u>. The specific purpose of this corporation is to operate educational facilities and/or attractions in the City of Cathedral City Downtown Area, to instruct the public on subjects useful to the individual and beneficial to the community, and to encourage and raise monetary and/or in lieu contributions via gifts, endowments and bequests for the purpose of enhancing and/or improving those services, facilities and equipment currently provided by the IMAX Theater located in the City of Cathedral City.

2.3. Limitations.

2.3.1. No part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, except as provided in Section 501(h) of the Internal Revenue Code of 1986, and this corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

- 2.3.2. The properties and assets of this Corporation are irrevocably dedicated to public and charitable purposes. No part of the net income, properties, or assets of this Corporation, in dissolution or otherwise, shall inure to the benefit of any Director or officer of the Corporation or to the benefit of any private person.
- 2.3.3. Upon liquidation or dissolution, all properties, assets and obligations remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed to (i) the City of Cathedral City, if permitted by the provisions of the Internal Revenue Code, or if not, then (ii) to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax-exempt status under Section 501(c) (3) of the Internal Revenue Code (or the corresponding provision of any future United States Internal Revenue Law).

ARTICLE III

3. MEMBERS.

- 3.1. <u>Members</u>. The Corporation shall have no members.
- 3.2. <u>Members Accepted</u>. The Directors may appoint individuals who shall carry the title of "member", but who shall have none of the rights or obligations of a member under the Nonprofit Public Benefit Corporation Law, Corporations Code Section 5110 <u>et</u>. <u>seq</u>. Any person so appointed shall be appointed without regards to race, color, religion, ancestry, national origin, physical handicap, marital status, sex, or sexual orientation.

ARTICLE IV

4. DIRECTORS.

4.1. Powers.

- 4.1.1. <u>General Corporate Powers</u>. Subject to the provisions and limitations of the California Nonprofit Public Benefit Corporation Law and any other applicable laws, the Corporation's activities and affairs shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors.
- 4.1.2. <u>Specific Powers</u>. Without prejudice to the general powers set forth in Section 4.1.1 of these Bylaws, but subject to the same limitations, the Board of Directors shall have the power to:
- 4.1.2.1. Hold public meetings or workshops regarding any proposed changes to the operation or maintenance of the IMAX Theater.

- 4.1.2.2. Take any and all steps necessary to promote the purposes of this corporation as set forth in Article II of these Bylaws, which shall include but not be limited to accepting monetary or real property donations and other similar contributions or financial support.
- 4.1.2.3. Appoint and remove, at the pleasure of the Board of Directors, all of the Corporation's officers, agents, and employees; prescribe powers and duties for them that are consistent with law, with the Articles of Incorporation, and with these Bylaws; and fix their compensation and require from them contractual security for faithful performance of their duties.
- 4.1.2.4. Cause the Corporation to be qualified to conduct its activities in any other state, territory, dependency, or country and conduct its activities within or outside California, unless otherwise provided herein.
- 4.1.2.5. Borrow money and incur indebtedness on behalf of the Corporation and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.
- 4.1.2.6. Adopt and use a corporate seal, and alter the form of the seal.
- 4.2. <u>Number</u>. The Board of Directors shall consist of five (5) Directors until changed by amendment to these Bylaws.
- 4.3. <u>Appointments</u>. The members of the Board of Directors shall be members of the City Council of the City of Cathedral City, as such City Council may be composed from time to time, unless other persons are appointed to the Board of Directors by the City Council.
- 4.4. <u>Qualifications of Directors</u>. At least three of the individuals appointed or elected to the Board of Directors shall be a resident of the City of Cathedral City.
- 4.5. Restriction on Interested Persons as Directors. No more than fortynine percent (49%) of the persons serving on the Board of Directors may be interested persons. An interested person is (a) any person compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; and (b) any brother, sister, ancestor, descendant, spouse, brother in law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the Corporation.

- 4.6. <u>Terms of Office</u>. Each Director shall hold office during their tenure on the City Council, or for two years if not a member of the City Council, unless such term is terminated earlier due to disqualification under the provisions set forth herein.
 - 4.7. <u>Compensation</u>. Each Director shall serve without compensation.

4.8. Meetings.

4.8.1. <u>Place of Meetings</u>. Meetings of the Board of Directors shall be held at the principal office of the Corporation as specified in Section 1.2 of these Bylaws or at such location designated by the Board of Directors. Meetings of the Board of Directors shall not be held at a location outside of the city limits of the City of Cathedral City, California.

4.8.2 Date and Time of Meetings.

- 4.8.2.1. <u>Annual Meeting</u>. The annual meeting of the Board of Directors shall be held at the principal office of the Corporation on the second Wednesday in July of each year. The initial meeting shall be conducted for purposes of organization, appointing officers and transaction of other business. The Directors shall not require notice of the annual meeting.
- 4.8.2.2. <u>Other Regular Meetings</u>. Other regular meetings of the Board of Directors shall be held at such time and days, and with such frequency, as may be established from time to time by a resolution of the Board of Directors. The Directors shall not require notice of these meetings.
- 4.8.2.3. <u>Special Meetings</u>. Upon written request to the Executive Director or Secretary of the Corporation, a special meeting of the Board of Directors may be called by the Executive Director, the Secretary or any two (2) Directors. Special meetings shall be held only upon giving notice in accordance with Section 4.9.
- 4.8.3. <u>Waiver of Notice</u>. Notice of a meeting need not be given to any Director who, either before or after the meeting, signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings. Notice of a meeting need not be given to any Director who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of notice to him or her.
- 4.8.4. <u>Quorum</u>. A majority of the authorized number of members of the Board of Directors constitutes a quorum of the Board of Directors for the transaction of business, except as hereinafter provided.

- 4.8.5. Transactions of Board of Directors. Except as otherwise provided in the Articles, in these Bylaws, or by law, every act or decision done or made by a majority of Directors present at a duly held meeting at which a quorum is present is the act of the Board of Directors, subject to the more stringent provisions of the California Nonprofit Public Benefit Corporation Law, including, without limitation, those provisions relating to: (a) approval of contracts or transactions in which a Director has a direct or indirect material financial interest, (b) approval of certain transactions between corporations having common directorships, (c) creation of and appointments to committees of the board, and (d) indemnification of Directors. Any meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken or decision made is approved by at least a majority of the required quorum for such meeting, or such greater number as is required by the law, the Articles, or these Bylaws.
- 4.8.6. <u>Conduct of Meetings</u>. The Mayor of the City of Cathedral City, or such other member of the Board of Directors as selected by a majority vote of the Directors, shall preside at meetings of the Board of Directors. The Secretary of the Corporation or, in the Secretary's absence, any person appointed by the presiding officer, shall act as Secretary of the Board of Directors.
- 4.8.7. Adjournment. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of an adjourned meeting need not be given unless the original meeting is adjourned for more than twenty-four (24) hours. If the original meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment, in accordance with the procedures set forth in these Bylaws for providing notice of meetings.
- 4.9. <u>Notice</u>. Notice of a special meeting or of an adjourned meeting shall be given to each Director by one of the following methods: (a) written notice given by first-class mail, postage prepaid, at least six (6) days prior to a meeting; (b) written notice given by personal delivery at least forty-eight (48) hours prior to the meeting; or (c) telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph or facsimile, electronic mail, or other electronic means, given at least forty-eight (48) hours prior to a meeting. All such notices shall be given or sent to the Directors' address or telephone number as shown on the records of the Corporation.

The notice shall state the time of the meeting, and the place if the place is other than the principal office of the Corporation. The notice need not specify the purpose of the meeting.

4.10. Action Without Meeting. Any action that the Board of Directors is required or permitted to take may be taken without a meeting if all members of the Board of Directors consent in writing to the action; provided, however, that the consent of any Director who has a material financial interest in a transaction to which the Corporation is a

party and who is an "interested Director" as defined in Section 5233 of the California Corporations Code shall not be required for approval of that transaction; further, provided that the provisions of law relating to meetings of public bodies so permit. Such action by written consent shall have the same force and effect as any other validly approved action of the Board of Directors. All such consents shall be filed with the minutes of the proceedings of the Board of Directors.

4.11. Removal of Directors.

- 4.11.1. <u>Removal for Cause</u>. The Board of Directors may remove a Director for cause upon the occurrence of any of the following events:
- 4.11.1.1. A Director has been declared of unsound mind by a final court order;
 - 4.11.1.2. A Director has been convicted of a felony; or
- 4.11.1.3. A Director has been found by final order or judgment of any court to have breached a duty under Article 3 of Chapter 2 of the California Nonprofit Public Benefit Corporation Law.
- 4.11.2. <u>Removal Without Cause</u>. Any Director may be removed at any time, without cause, if such removal is approved by a majority of the Board of Directors then in office.
- 4.12. Resignation of a Director. Except as otherwise provided by law, any Director may resign by giving written notice of resignation, to the Executive Director, or the Secretary of the Corporation. The resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective. If the resignation is effective at a future time, a successor may be appointed to take office when the resignation becomes effective. Except on notice to the Attorney General of California, no Director may resign if the Corporation would be left without a duly elected Director or Directors.

4.13. Vacancies in the Board of Directors.

- 4.13.1. <u>Causes</u>. A vacancy shall exist on the occurrence of either of the following: (1) the death, resignation, or removal of any Director, or (2) when the number of authorized Directors is increased.
- 4.13.2. <u>Filling Vacancies</u>. Except as otherwise provided in the Articles or these Bylaws, vacancies on the Board of Directors shall be filled by appointment by the Board of Directors pursuant to the provisions of Section 4.3. of these Bylaws.
- 4.13.3. <u>No Vacancy on Reduction of Number of Directors</u>. No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

ARTICLE V

5. OFFICERS.

- 5.1. <u>Number and Titles</u>. The officers of the Corporation shall be an Executive Director, a Secretary, a Chief Financial Officer, and such other officers with such titles and duties as shall be stated in these Bylaws or determined by the Board of Directors and as may be necessary. Any number of offices may be held by the same person, except that neither a Secretary nor the Executive Director shall serve concurrently as the Chief Financial Officer.
- 5.2. <u>Appointment of Officers</u>. The officers shall be chosen annually by and serve at the pleasure of the Board of Directors, subject to the rights, if any, of an officer under any written contract, of employment.

5.3. Duties of Officers.

- 5.3.1. Executive Director. The Executive Director shall be the general manager and chief executive officer of the Corporation and shall, subject to the control of the Board of Directors, have supervision, direction, and control of the activities, affairs and officers of the Corporation. Such officer shall perform all duties incident to the office of Executive Director and such other duties as may be required by law, by the Articles of Incorporation of the Corporation, or by these Bylaws, or which may be prescribed, from time to time, by the Board of Directors.
- 5.3.2. Secretary. The Secretary shall keep or cause to be kept, at the principal office of the Corporation or such other place as the Board of Directors may order, a copy of the Articles of Incorporation and Bylaws, as amended to date, and a book of minutes of all meetings, proceedings, and actions of the Board of Directors. The minutes of meetings shall include the time and place that the meeting was held, whether the meeting was annual, regular, or special, and, if special, how authorized, the notice given, and the names of those present at Board and committee meetings. The Secretary shall keep a record of the addresses of each Director and shall give or cause to be given, notice of all Board of Directors' meetings as required. The Secretary shall perform such other and further duties as may be required by law or as may be prescribed or required from time to time by the Board of Directors.

5.3.3. Chief Financial Officer.

5.3.3.1. The Chief Financial Officer ("CFO") of the Corporation shall serve as the "treasurer" of the Corporation and shall keep and maintain in written form adequate and correct books and records of account of the properties, and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, and losses. The CFO shall send or cause to be given to the Directors such financial statements and reports as are required to be given by law, by

these Bylaws, or by the Board of Directors. The books and records of account shall be open to inspection by any Director at all reasonable times.

- 5.3.3.2. The CFO shall deposit all monies and other valuables in the name and to the credit of the Corporation with such depositaries as may be designated by the Board of Directors. The CFO shall disburse the funds of the Corporation as ordered by the Board of Directors, and shall render to the Executive Director and the Board of Directors, on request, an account of all such officer's transactions as CFO, and of the financial condition of the Corporation. The CFO shall perform such other and further duties as may be required by law or as may be prescribed or required from time to time by the Board of Directors or these Bylaws.
- 5.3.3.3. If required by the Board of Directors, the CFO shall give the Corporation a bond in the amount and with the surety or sureties specified by the Board of Directors for faithful performance of the duties of the office and for restoration to the Corporation of all of its books, papers, vouchers, money and other property of every kind in possession or under the control of the CFO on his or her death, resignation, retirement or removal from office.
- 5.4. <u>Subordinate Officers</u>. Any subordinate officers appointed by the Board of Directors pursuant to Section 4.1.2.3 of these Bylaws shall hold office for such period, have such authority and perform such duties as may, from time to time, be determined by the Board of Directors.
- 5.5. Resignation of Officers. Any officer may resign at any time by giving written notice to the Corporation. The resignation shall take effect as of the date the notice is received or at any later time specified in the notice and, unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.
- 5.6. <u>Removal of Officers</u>. Without prejudice to any rights of an officer under any contract of employment, any officer may be removed with or without cause at any meeting of the Board of Directors by the affirmative vote of those Directors present at the meeting.
- 5.7. <u>Filling Vacancies in Office</u>. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office, provided, however, that vacancies need not be filled on an annual basis.

ARTICLE VI

6. RIGHTS OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

6.1. Indemnification.

- 6.1.1. Right of Indemnity. To the fullest extent permitted by law, this Corporation shall indemnify its Directors, officers, employees, and other persons described in Section 5238(a) of the California Corporations Code, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that Section, and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person described in that Section. "Expenses," as used in this bylaw, shall have the same meaning as in Section 5238(a) of the California Corporations Code.
- 6.1.2. <u>Approval of Indemnity</u>. On written request to the Board of Directors by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the California Corporations Code, the Board shall promptly determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the Board shall authorize indemnification.
- 6.1.3. Advancement of Expenses. To the fullest extent permitted by law and except as otherwise determined by the Board of Directors in a specific instance, expenses incurred by a person seeking indemnification under Sections 6.1.1 and 6.1.2 of these Bylaws in defending any proceeding covered by those Sections shall be advanced by the Corporation before final disposition of the proceeding, provided that the Corporation first receives an undertaking by or on behalf of that person that the advance will be repaid, except that repayment will not be due if it is ultimately determined that the person is entitled to be indemnified by the Corporation for those expenses.
- 6.2. <u>Insurance</u>. The Corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its Directors, officers, employees, and other agents, against any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer's, director's, employee's, or agent's status as such.

ARTICLE VII

7. COMMITTEES.

7.1. <u>Establishment</u>. At the sole discretion of the Board of Directors, committees may be established as the Board deems necessary and appropriate. The Board cannot, however, delegate the powers listed in Corporations Code Section 5212(a) (1) - (8) to any committee. If any committee is to have any non-director committee members, it is not a "committee of the Board," and it should be clearly labeled an "advisory committee."

ARTICLE VIII

8. RECORDS AND REPORTS.

- 8.1. <u>Maintenance of Corporate Records</u>. The Corporation shall keep: (1) adequate and correct books and records of account; (2) written minutes of the proceedings of its Board of Directors and committees of the Board; and (3) a record of each Director's name and address.
- 8.2. <u>Maintenance of Articles and Bylaws</u>. The Corporation shall keep at its principal office the original or a copy of the Articles of Incorporation and Bylaws, as amended to date.
- 8.3. <u>Inspection by Directors</u>. Every Director shall have the absolute right at any reasonable time to inspect the Corporation's books, records and documents of every kind. The inspection may be made in person or by the Director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.
- 8.4. Annual Report. The Corporation shall cause an annual report to be sent to all members of the Board of Directors not later than one hundred twenty (120) days after the close of the Corporation's fiscal year. The report shall be accompanied by any report of it of an independent accountant, or if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation. The report shall contain the following information, in appropriate detail, for the fiscal year:
- 8.4.1. The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year;
- 8.4.2. The principal changes in assets and liabilities including trust funds;
- 8.4.3. The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes; and
- 8.4.4. The expenses and disbursements of the Corporation for both general and restricted purposes.

8.5. Annual Statement of Certain Transactions and Indemnifications. The Corporation may annually prepare and mail or deliver to each Director a statement of any transaction or indemnification 'of the following kind within one hundred twenty (120) days after the end of the Corporation's fiscal year: 8.4.1. Any transaction (i) in which the Corporation was a party, (ii) in which an "interested person" had a direct or indirect material financial interest, and (iii) which involved more than \$50,000, or was one of a number of transactions with the same interested person involving, in the aggregate, more than \$50,000. For this purpose, an "interested person" is any Director or officer of the Corporation. 8.4.2. Any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any officer or Director of the Corporation under Section 6.1 of these Bylaws.

ARTICLE IX

9. <u>AMENDMENTS</u>.

- 9.1. <u>Amendment of Articles of Incorporation</u>. Unless otherwise provided under California Corporations Code Section 5110 et seq., amendments to the Articles of Incorporation may be adopted if approved by the Board of Directors. An amendment to the Articles of Incorporation shall be effective as of the date that the appropriate certificate of amendment is filed with the Secretary of State.
- 9.2. <u>Amendment of Bylaws</u>. Except as otherwise required by law or by the Articles of Incorporation, these Bylaws may be amended or repealed, and new Bylaws may be adopted by the Board of Directors.

CERTIFICATE OF SECRETARY OF CATHEDRAL CITY DOWNTOWN FOUNDATION a California Nonprofit Public Benefit Corporation

Corporation and that the fore	that I am the duly elected and egoing Bylaws, comprising twelve (of said Corporation as duly adopted	12) pages, excluding this
Dated:, 2001	Secretary	

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EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement"), dated as of December 22, 2000, is entered into by and between the CATHEDRAL CITY DOWNTOWN FOUNDATION, a California nonprofit public benefit corporation (the "Foundation") and ED BISAILLON ("Employee").

RECITALS

- A. The Foundation is a nonprofit public benefit corporation with the mission of enriching the lives of the residents of Cathedral City through programs and activities that involve education, culture and art.
- B. The Foundation is the operator of that certain large format theater located in the downtown area of the City of Cathedral City and known as the IMAX Theater (the "Theater") under the terms of an operating agreement (the "Operating Agreement") which it has entered or will enter into with the Redevelopment Agency of the City of Cathedral City (the "Agency"), the owner of the Theater.
- C. Under the terms of the Operating Agreement, Foundation has the right and obligation to operate the Theater on a day-to-day basis, as the agent for the Agency.
- D. Employee is experienced in the operation of large format theaters, and was the manager of the Theater for the prior operator, Desert IMAX, LLC.
- E. The parties desire to enter into this Agreement for the purposes of providing for the employment of Employee by the Foundation as a manager of the Theater, on the terms and conditions set forth hereinafter.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREINAFTER, THE PARTIES HERETO AGREE AS SET FORTH BELOW.

TERMS AND CONDITIONS

1. <u>Employment and Duties</u>.

a. <u>Generally</u>. The Foundation hereby employs Employee, effective as of the date hereof (the "Effective Date"). and the Employee agrees upon the terms and conditions set forth to serve, effective as of the Effective Date, as <u>Theater Manager</u>, and to perform all of the duties customarily appurtenant to such position, including, without limitation, the day-to-day operation and management of the Theater. In this capacity, Employee shall report directly to the Executive Director of the Foundation, or to such other person as may be designated by the Board of the Foundation.

- b. <u>Services and Duties</u>. For so long as Employee is employed by the Foundation, he shall (i) devote his full business time to the performance of his duties hereunder, (ii) faithfully serve the Foundation's interests and (iii) conform to and comply with all applicable laws and ordinances and the good faith directions and instructions of his superiors in the Foundation. Consistent with the foregoing, Employee shall be in charge of all daily operations of the Theater, including sales, marketing, administration, programming and other necessary functions and responsibilities in connection with the management of the Theater. The management of the Theater shall be conducted in accordance with the budget restraints imposed by the Foundation and consistent with good management practice within the industry.
- c. <u>No Other Employment</u>. For as long as Employee is employed by the Foundation, he will not, directly or indirectly, render services to any other person or entity for which he receives compensation without the prior written approval of the Board of the Foundation. No such approval shall be required if Employee performs inconsequential services without compensation therefor in connection with personal investments, or in the performance of charitable or civic activities unrelated to the Theater, provided such actions are not otherwise in violation of this Agreement.
- 2. <u>Term of Employment</u>. The term of Employee's employment under this Agreement (the "Term") shall commence on the Effective Date and shall terminate upon written notice of termination by either party. This employment is an "at will" employment and may be terminated by the Foundation, with or without cause, upon written notice thereof by the Foundation. In the event of termination without cause, Employee shall be provided with, at the Foundation's option, either thirty (30) days notice of termination or severance pay equivalent to one month's base salary. In the event of termination with cause, no notice or severance shall be required.
- 3. <u>Compensation and Other Benefits</u>. Subject to the provisions of this Agreement, the Foundation will pay and provide the following compensation and other benefits to Employee during the Term as compensation for all services rendered hereunder and the covenants contained herein:
- a. <u>Salary</u>. The Foundation shall pay to Employee an annual salary of \$60,000, payable in regular installments consistent with the Foundation's regular practices and schedules.
- b. Annual Bonus. Employee shall be eligible in calendar year 2001, and each calendar year thereafter during which he is employed under this Agreement for an annual bonus. Bonuses are paid at year end or at such other time as the Board of the Foundation may from time to time determine. For calendar years after 2001, Employee's bonus will consist of an amount equal to ten percent (10%) of increases from the previous calendar year in PBITDA [profit before interest, taxes (income taxes), depreciation and amortization]. All accounting will be based on the accrual method and in compliance with Generally Accepted Accounting Principles applied on a consistent basis.

Employee must be employed on the last day of each year in order to be eligible for a bonus in that calendar year. For calendar year 2001 only, Employee will eligible for a bonus equal to three percent (3%) of the increase in gross revenues for 2001 from the gross revenues generated by the prior operator of the Theater in calendar year 2000, based upon the revenue numbers provided to the Agency by the prior operator, except that the dollar amount of any such bonus for calendar year 2001 shall not exceed an amount equal to ten percent (10%) of Employee's base annual salary.

- c. <u>Auto Expense</u>. Employee will be paid an auto expense allowance of \$200.00 per month, and will utilize his personal automobile as necessary in the performance of his duties without further charge to the Foundation.
- d. <u>Other Expenses</u>. Employee will be reimbursed for other expenses properly incurred in the course of his employment, consistent with the reimbursement policy adopted from time-to-time by the Foundation. Such expenses shall be paid upon the periodic submission of invoices or other evidence of payment as reasonably requested by the Foundation.
- e. Other Benefits. As of the Effective Date the Foundation provides certain employee benefits, which consist of medical and dental insurance for full time employees. Employee shall be entitled to receive any benefits which are provided generally by the Foundation to its employees as such benefits may exist from time-to-time. In addition, in recognition of the fact that Employee is on call 24 hours per day, Employee shall be afforded seven (7) paid sick days annually.
- f. <u>Vacation</u>. Employee is entitled to two weeks (10 days) of paid vacation per year, accruing over the course of each year, commencing on the Effective Date.
- 4. <u>Employee Conduct</u>. Employee is expected to manage his own work schedule, consistent with the demands of the position. The parties acknowledge that the nature of theater management often requires that Employee work more than five consecutive days, and/or more than eight hours in a day. Employee is expected to discharge the responsibilities of Theater Manager as the demands and exigencies of the position demand. Employee acknowledges that the visible nature of the position in the community and the need to operate the Theater in a way that is consistent with the Agency's public responsibilities requires the highest degree of professional and ethical conduct. Employee is expected to be visible and active in the community in order to foster the business of the Foundation.

5. <u>Miscellaneous Provisions</u>.

a. <u>Amendments</u>. No amendment or modification to the terms of this Agreement shall be valid unless (i) in writing and executed by the parties and (ii) approved by the Board of the Foundation.

- Confidentiality. Employee acknowledges that the services to b. be performed by him under the terms of this Agreement will involve his acquisition of confidential information and/or trade secrets concerning the Foundation and/or the operation of the Theater, the use or disclosure of which would cause the Foundation substantial damage which could not be readily calculated and for which no remedy at law would be adequate. Accordingly, Employee covenants and agrees that he will not at any time, except in the normal course of his duties or with the written consent of the Board of the Foundation, directly or indirectly disclose to any person or entity any confidential information which he may learn by reason of his employment. The term "confidential information" means any information not previously disclosed to the public or to the trade by the Foundation, with respect to the Foundation's products, operation, practices, finances, facilities and methods, trade secrets or other intellectual property, systems, procedures, manual, confidential reports, business plans, prospects or opportunities. Employee agrees that all confidential information is and shall remain the sole property of the Foundation, and that upon his termination Employee will deliver to the Foundation all copies, including computer disks or printouts, or any confidential information.
- c. <u>Waivers</u>. The waiver by either party of any provision of this Agreement, whether express or implied, shall not operate or be construed as a waiver of any subsequent violation of any such provision.
- d. <u>Assignments</u>. No right, benefit, obligation or interest hereunder shall be subject to assignment, encumbrance, charge, pledge, hypothecation or set off by Employee in respect of any claim, debt, obligation or similar process.
- e. <u>Severability</u>. If any term or provision of this Agreement is determined to be invalid or unenforceable in a final court or arbitration proceeding, (i) the remaining terms and provisions hereof shall be unimpaired and (ii) the invalid or unenforceable term or provision shall be deemed to be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.
- f. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- g. <u>Entire Agreement</u>. This Agreement sets forth the entire agreement of the parties hereto with respect to the matters covered hereby and supersedes all prior agreements, understandings and/or discussions of the parties with respect to the subject matter hereof.
- h. <u>Headings</u>. The headings and captions of the sections or subsections of this Agreement are included solely for convenience of reference and shall not control the meaning or interpretation of any provisions of this Agreement.

- i. <u>Counterparts</u>. This Agreement may be executed in counterparts, whether by original signature or facsimile, with the same effect as if the signature were an original signature upon the same instrument.
- j. <u>Disciplinary and Grievance Procedures</u>. There is no formal disciplinary procedure with respect to Employee's employment. Employee is not and shall not be considered a public employee for any purpose whatsoever.
- k. <u>Board Approval</u>. This Agreement shall not be valid until approved by the Board of the Foundation and executed by an authorized agent of the Foundation.

IN WITNESS WHEREOF, the parties have executed this Agreement effective upon the date first above written.

CATHEDRAL CITY DOWNTOWN FOUNDATION A California nonprofit public benefit corporation.

By	
Name:	
Title:	•
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REDEVELOPMENT AGENCY OF THE CITY OF CATHEDRAL CITY CATHEDRAL CITY DOWNTOWN FOUNDATION AGENDA REPORT

SUBJECT: Lease Agreement between the Redevelopment Agency and the Cathedral City Downtown Foundation and Grant to the Cathedral City Downtown Foundation for the operation of the Desert IMAX Theater.

DEPARTMENT: Redevelopment

MEETING DATE: December 12, 2001 DEADLINE FOR ACTION: N/A

CONTACT PERSON; Susan Moeller

APPROVED: Melle 13.7. Smoken ____

Finance

RECOMMENDATION:

The Redevelopment Agency Board should approve the lease with the Cathedral City Downtown Foundation (in substantial conformance with the attached Lease Agreement) and a Grant Agreement providing up to \$456,000 to the Foundation for the operation of the Desert IMAX Theater for the fiscal year 2001-2002 (in substantial conformance with the attached Lease Agreement).

BACKGROUND:

The Redevelopment Agency assumed control of the Desert IMAX building and operation of the IMAX Theater on January 1, 2001 when Desert IMAX LLC defaulted on its financing and lease agreement in December, 2000. The Agency and City also formed the Cathedral City Downtown Foundation to operate the theater.

ANALYSIS:

The following summarizes two Agreements that memorialize actions already taken by the Redevelopment Agency Board.

Lease Agreement

The attached Lease Agreement memorializes the existing relationship between the Agency and the Foundation. Some of the salient points of the Lease are:

- 1. The date of the Lease is January 1, 2001, even though the document is not being executed until much later. There are references in the Lease to the fact that the Foundation took possession on January 1, 2001.
- 2. The Foundation is leasing only the Theater. The balance of the building will be leased and managed by the Agency.
- 3. The Foundation is required to provide access to the restrooms for the benefit of other building tenants.
- 4. The Base Rent is the debt service on the building; the base rent would increase or decrease as the monthly debt service increases or decreases.
- 5. The Foundation is to assume responsibility of the IMAX Corporation Lease Agreement.
- 6. The Foundation is responsible for all internal maintenance and improvements while the Agency is responsible for all exterior improvements.
- 7. The Foundation is to pay utilities and the Agency is required to allocate utility costs that are not separately metered. This would also apply to insurance, taxes (if any) and common area maintenance charges.

Grant Agreement

In previous action, the Redevelopment Agency approved a subsidy of up to \$450,000 for the operation of the IMAX Theater through fiscal year 2001-2002. Legal counsel has recommended that the Redevelopment Agency and the Cathedral City Downtown Foundation enter into a Grant Agreement. Several important issues with respect to the Grant Agreement are as follows:

- 1. The grant is for an amount up to \$456,000, not an outright grant of that amount.
- 2. The Agency will only advance funds sufficient to enable the Theater to break even, and such advances will be made from time to time as necessary.
- 3. The funds may only be used for purposes approved by the Agency.
- 4. The Agency may make payments directly to third parties if it so chooses.
- 5. The Agency may stop advancing grant funds upon a number of events, which are set forth in the Grant Agreement. One of those events is a breach of the Lease.

FISCAL IMPACT:

The Agency has already budgeted \$456,000 to fund the maximum amount of the proposed grant.

Attachments: Lease Agreement

Grant Agreement

LEASE AGREEMENT

By and Between

THE REDEVELOPMENT AGENCY OF THE CITY OF CATHEDRAL CITY

AND

CATHEDRAL CITY DOWNTOWN FOUNDATION

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is dated as of January, 1, 2001, although executed subsequent to that date, by and between the REDEVELOPMENT AGENCY OF THE CITY OF CATHEDRAL CITY, a public body corporate and politic, as landlord ("Landlord" or "Agency") and THE CATHEDRAL CITY DOWNTOWN FOUNDATION, INC, a California corporation, as tenant ("Tenant").

RECITALS

- A. WHEREAS, the Agency is the owner of that certain improved real property (the "Property") located in the City of Cathedral City, State of California, which is more particularly described in Attachment 1A hereto; and
- B. WHEREAS, the Property is improved with certain facilities consisting of an "IMAX" theater (the "Theater") and related retail space (collectively, the "Complex"); and
- C. WHEREAS, the Agency has entered into an agreement (as amended, the "IMAX Agreement") with the IMAX Corporation, a Canadian corporation ("IMAX") wherein IMAX agreed to lease to Agency certain equipment, and provide all specifications and know how required to open and operate a Theater, and to provide such additional services as are necessary or convenient to the operation of the Theater; and
- D. WHEREAS, the Agency desires to lease the Theater portion of the Complex to the Tenant; and
- E. WHEREAS, the Tenant desires to lease the Theater portion of the Complex from the Agency and operate the same; and
- J. WHEREAS, the parties desire this Lease to express the terms pursuant to which Tenant leases the Theater from Agency.

NOW, THEREFORE, in consideration of the terms, covenants and conditions contained herein, Agency and Tenant hereby agree as follows:

ARTICLE 1 SUBJECT OF LEASE

1.1 Purpose of the Lease

The purpose of this Lease is to effectuate the Redevelopment Plan (as amended) (the "Redevelopment Plan") for Project Area No. 1 of the Downtown Cathedral City Redevelopment Project (the "Project") by providing for the operation of the Theater. The operation of the Theater by Tenant and the fulfillment generally of this Lease are in the vital and best interest of the City of Cathedral City, California (the "City") and the health, safety, morals, and welfare of its residents.

1.2 The Property

The Property is that certain real property within the Project Area legally described in Attachment 1A and illustrated and designated as such on the "Site Map" (attached hereto as Attachment 1B).

Except as expressly provided to the contrary in this I ease, reference to the Complex is to the Property together with any improvements now or hereafter located on the Property, including, without limitation, the Theater.

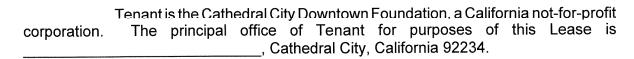
1.3 Parties to the Lease

1.3.1 Landlord

Landlord is the Redevelopment Agency of the City of Cathedral City, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California. The principal office of Landlord is located at 68-700 Avenida Lalo Guerrero, Cathedral City, California 92234.

"Landlord" as used in this Lease, includes the Redevelopment Agency of the City of Cathedral City and any assignee of or successor to its rights, powers and responsibilities.

1.3.2 Tenant



Wherever the term "Tenant" is used herein, such term shall also include any permitted nominee or assignee as herein provided.

ARTICLE 2 LEASE OF THEATER

- 2.1 <u>Lease of Theater</u>. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord for the Term and upon the provisions, covenants and conditions herein set forth, the portion of the Complex constituting the Theater as shown on Exhibit "1B", attached hereto and incorporated herein by this reference. No title to the Property or the Theater is transferred hereby.
- 2.2 <u>Condition of Title</u>. The Theater is leased subject to such matters affecting title which do not inhibit, prevent or impair the, operation, maintenance or use of the Theater, insofar as the same are now in force and affect the Theater or the Complex or any part thereof.
- 2.3 Complex Common Areas. Tenant agrees and understands that Agency has or will lease areas of the Complex other than the Theater to other tenants, and that the patrons and employees of such tenants will require access to restroom facilities located within the Theater portion of the Complex. Tenant hereby agrees to provide access to such persons freely and without charge during the term of this Lease, and on such dates and at such times as are necessary given the operating days and hours of the other tenants, and to assume responsibility for maintenance and cleaning of said restroom facilities.

ARTICLE 3 POSSESSION OF THEATER

3.1 Acceptance of Theater.

Except as may be otherwise herein provided, Tenant shall by entering into and occupying the Theater be deemed to have accepted the Theater and to have acknowledged that the same is then in the condition called for by this Lease, and is fit for the uses permitted under this Lease.

3.2 Quiet Enjoyment

Tenant, upon performing and complying with all covenants, agreements, terms and conditions of this Lease to be performed or complied with by it, shall lawfully and quietly hold, occupy and enjoy the Property during the Term of this Lease without hindrance or molestation by Landlord, or any person or persons claiming through Landlord.

3.3 Use of Improvements.

During the Term of this Lease, Tenant shall have use of all improvements constituting the Theater, including, without limitation, any and all furniture, fixtures, machinery, rigging, lighting, staging, trade fixtures, equipment and other personal property as may be necessary or convenient to the operation or maintenance of the Theater

(collectively, the "Equipment"). Tenant shall not remove, damage or destroy the Equipment during the Term of this Lease.

3.4 Surrender of Property.

On expiration or termination of the Term of this Lease, and subject only to the rights of equipment lessors and senior lien holders, if any, existing at the commencement of this Lease, Tenant shall peaceably and quietly leave and surrender the Theater and the Equipment to Landlord, broom clean and in good order, condition and repair, reasonable wear and tear and obsolescence excepted. Tenant shall leave in place and in good order, condition and repair, all Equipment, contracts, agreements, books and records, and any other writing related to the operation, maintenance or use of the Complex. Tenant shall not remove unattached Equipment or other personalty. Landlord shall have the right to have the Theater and the Equipment thereon inspected to determine whether the Theater, the Equipment and the other personalty have been properly maintained, repaired and restored in accordance with the terms of this Lease.

3.5 Abandonment.

Tenant shall not abandon or vacate the Property at any time during the Term hereof. If Tenant shall abandon, vacate or otherwise surrender the Theater, or be dispossessed thereof by process of law or otherwise, the same shall constitute a default under this Lease on the part of Tenant and, in addition to any other remedy available on the part of Tenant, any of Tenant's property left in, upon or about the Theater shall, at Landlord's option, be deemed to be abandoned and shall become the property of Landlord.

ARTICLE 4 TERM

4.1 Duration and Commencement.

The initial term ("Initial Term") of this Lease shall commence on the Possession Date (as defined below at Article 28) and shall continue thereafter until June 30, 2002, or until terminated in accordance with Article 21 below. The parties hereto acknowledge that Tenant has been in possession of the Theater since the Possession Date and that this Lease is intended to govern the rights and obligations of the parties with respect to all subject matters covered herein, notwithstanding the delayed execution of this Lease.

4.2 Options to Extend.

4.2.1 Landlord grants to Tenant an option to extend the Initial Term of this Lease for up to two (2) consecutive renewal terms (each a "Renewal Term" and collectively the "Renewal Terms"), on the same terms and conditions set forth herein, provided Tenant shall give written notice of the exercise of such option to Landlord not less than two (2) months prior to the expiration of the Initial Term and each successive Renewal Term.

- 4.2.2 All option terms must be exercised consecutively so that the Term shall be without interruption; and failure to exercise an option to extend for a Renewal Term shall cause any remaining options to extend to be null and void.
- 4.2.3 Tenant's right to exercise any of the foregoing options and the Renewal Terms to which options pertain are subject to the following conditions precedent:
 - (i) The Lease shall be in effect at the time notice of exercise is given and on the last day of the term being renewed; and
 - (ii) Tenant shall not be in material Default at the time notice of exercise is given or on the last day of the term being renewed; and
 - (iii) An IMAX Theater or other Large Format Theater venue is being operated in the Theater at the time notice of exercise is given and on the last day of the term to which such exercise pertains; and
 - (iv) The IMAX Agreement or other similar agreement with a Large Format Theater vendor is in full force and effect at the time notice of exercise is given and on the last day of the term being renewed, and there is no event which, with the giving of notice or passage of time would become an event of default thereunder; and
 - (v) The Theater shall be in good operating condition with no material deferred internal or external maintenance other than normal wear and tear and subject to normal and customary replacements and repairs; and
 - (vi) Tenant shall establish to the satisfaction of Landlord, in its sole discretion, that Tenant has the financial ability to operate the Theater during the Renewal Tern in such a way as to be able to pay all operating expenses of the Theater, and all other obligations imposed on Tenant by this Lease, and/or shall demonstrate to the satisfaction of Landlord, in its sole discretion, that Tenant has the financial resources or binding commitments from other sources to provide some or all of such resources to meet all of such obligations and expenses. A determination by Landlord that Tenant fails to meet any requirement for renewal shall be final, binding and not subject to challenge for any reason.

ARTICLE 5 RENT

Tenant shall pay, without abatement, deduction, or offset, the Rent in such amounts as provided in this Article 5.

5.1 Base Rent

As the base rent payable by the Tenant in connection with the Lease, Tenant agrees to pay, commencing on the Possession Date, an amount equal to the debt service payments due on the existing loan for the Complex owing to La Jolla Bank, or any replacement lender, as such loan may from time to time be paid down and/or refinanced (but not increased in principal amount) the ("Minimum Monthly Rent").

The Minimum Monthly Rent shall be payable in advance on the first day of each calendar month.

5.2 Participation Rent.

In any Lease Year Quarter that the Theater should generate a Quarterly Net Profit (as such term is defined and calculated in accordance with Article 28) the Tenant agrees to pay to the Agency, as additional rent, one hundred percent (100%) of the Quarterly Net Profit of the Theater during such Lease Year Quarter within thirty (30) days after the end of such Lease Year Quarter up to a maximum of Four Hundred Fifty Six Thousand Dollars (\$456,000) cumulatively in a Lease Year (the "Participation Rent"). In the event that the Tenant reaches the Four Hundred Fifty Six Thousand Dollar (\$456,000) threshold during any Lease Year, then the amount of Participation Rent payable to the Agency for the subject Lease Year Quarter, and for each subsequent Lease Year Quarter in the same Lease Year, shall be reduced to fifty percent (50%) of the Quarterly Net Profit and shall also be payable within thirty (30) days after the end of each such Lease Year Quarter. It is understood by the parties that the Participation Rent due hereunder is in addition to any other rent payable under this Lease.

- 5.2.1 <u>Verification of Participation Rent</u>. So that the Agency may verify the accuracy of the Participation Rent to be paid hereunder, the parties hereby agree on the following procedures:
- a. Tenant shall deliver to Agency within thirty (30) days following the close of each Lease Year Quarter (i) a statement certified as being true and correct by the chief financial officer of Tenant and setting forth the Net Profit or Operating Deficit, for the preceding Lease Year Quarter together with the computation of Participation Rent payable for the preceding Lease Year Quarter (the "Quarterly Statement"), and (ii) a check payable to Landlord in the amount of the installment of Participation Rent so computed.
- b. Within sixty (60) days after the end of each Lease Year, Tenant shall deliver to Landlord (i) a statement (the "Annual Statement") certified as being true and

correct by Tenant's chief financial officer and setting forth the Net Profit or Operating Deficit, as calculated in accordance with Article 28, for the preceding Lease Year, and (ii) a computation of the amount of Participation Rent for such Lease Year made in accordance with the provisions of this Lease.

In the event that Participation Rent determined by the Annual Statement exceeds the amount of Participation Rent previously paid, Tenant shall pay the difference to Landlord simultaneously with delivery of the Annual Statement. If the amount of Participation Rent previously paid by Tenant is greater that the amount computed pursuant to the Annual Statement, Tenant shall be entitled to a credit against Tenant's next payment or payments of Participation Rent in the amount of such overpayment.

5.3 Other Consideration.

In consideration for this Lease, and in addition to the payment of Rent and other obligations set forth in this Lease, Tenant covenants that it will during the entire Term of this Lease:

- 5.3.1 Operate and maintain a Theater or other Large Format Theater in the space designated for the Theater within the Complex, together with such related uses as may be necessary or convenient to, or compatible with, the operation of the Theater. It shall not be a default under this Lease for the Theater be closed from time to time for repairs, maintenance, rehabilitation, and the like, or for some reasonable periods of time during the summer months if attendance does not warrant continued operation.
- 5.3.2 Assume and comply with the IMAX Agreement and/or other agreements with IMAX Company or other Large Format Theater vendors regarding technical aid and support agreements, service and trade mark agreements, licensing agreements, rental agreements, distribution agreements, equipment and fixture agreements and other agreements (which are to be effective concurrently with the Possession Date) and to make other arrangements satisfactory to Landlord, with the IMAX company regarding the, maintenance and operation of the Theater which are necessary or convenient to assure the improvements, equipping, staffing and continued operation of a Theater and the supply of high-quality feature films for commercial exhibition at this location. The IMAX Agreement or agreements with other Large Format Theater vendor, and related agreements, shall be freely assignable to Landlord in the event that this Lease is terminated or Tenant is in default of its covenants, its obligations to construct the Complex, its obligations to pay Rent or is otherwise in material default under this Lease.
- 5.3.3 Pay when due all Impositions applicable to the Tenant's portion of the building in which the Theater is located.
- 5.3.4 Pay its allocable share of all expenses incurred by the Landlord in owning and/or operating the building of which the Theater is a part, including, without limitation, charges for maintenance, improvements and repairs of the building, taxes,

insurance, utilities, payments due under the Common Area Maintenance Agreement, janitorial services, security, third party management, governmental assessments, business improvement district contributions, parking charges and legal and accounting expenses.

5.4 Additional Rent. All sums paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any of Tenant's obligations, including but not limited to the payment of Impositions, together with interest thereon at the Interest Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost or expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

ARTICLE 6 USE OF PROPERTY

- 6.1 <u>Permitted Use</u>. The Theater shall be used only for the purpose of operating a Theater or other Large Format Theater venue in the Theater. Tenant shall operate the Theater and conduct activities therein in a prudent and businesslike manner and in full compliance with all terms and conditions of this Lease.
- 6.2 <u>Reciprocal Easement Agreement</u>. This Lease is subject and subordinate to that certain "Declaration of Covenants, Conditions, and Restrictions and Reciprocal Easement Agreement" (the "Restrictions"), which impose certain restrictions upon the use of the Property and the Complex. Tenant covenants to pay any and all fees, charges, assessments or other costs imposed by the Restrictions, but the Agency shall be entitled to cast the "Owner Votes" as provided in the Restrictions. In the event of a conflict between the terms of this Lease and the terms of the Restrictions, the Restrictions shall prevail.
- 6.3 <u>Prohibited Uses</u>. Tenant shall not use, or allow use of, the Theater for any activity other than a Theater or other Large Format Theater venue, or any use which in the reasonable judgment of Landlord would interfere with the peace, quiet and general welfare of the City's downtown area, without the prior written consent of Landlord. In addition, Tenant shall not permit the Theater to be used for any of the "Prohibited Uses" as set forth in the Restrictions.
- 6.4 <u>Nuisance</u>. Tenant shall not suffer or permit the maintenance of any nuisance (including unusual noises unrelated to the theater and obnoxious odors) at the Theater.
- 6.5 Compliance with Laws. Tenant will not occupy or use the Theater, or permit the Theater to be used or occupied, nor do or permit anything to be done in or on the Theater, in whole or in part, for other than legal purposes, or for a purpose or in a manner liable to create a public or private nuisance or to cause structural injury to the Complex or any part thereof, or which may make it impossible to obtain fire or other insurance thereon, or in violation of any certificate of occupancy or evidence of compliance

issued by any governmental agency covering or affecting the use of the Theater or Complex.

- 6.6 <u>Use in Accord with the Redevelopment Plan</u>. Tenant hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof that the Theater shall be devoted to the uses specified in the applicable provisions of the Redevelopment Plan.
- 6.7 <u>Nondiscrimination</u>. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Theater nor shall the Tenant itself, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of vendees on the Property herein leased.

6.7.1 Form of Nondiscrimination and Nonsegregation Clauses

Tenant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Theater or any part thereof, that it shall refrain from restricting the lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Theater (or any part thereof) on the basis of sex, sexual orientation, marital status, race, color, religion, creed, ancestry or national origin of any person. All such leases, or contracts pertaining thereto shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- a. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, sexual orientation, marital status, race, color, religion, creed, national origin, or ancestry, in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, or occupancy of tenants, lessees, sublessees, tenants, or vendees in the land herein leased."
- b. In contracts: "There shall be no discrimination against or segregation of, any person or group persons on account of sex. sexual orientation, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or

practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

6.7.2 Effect and Duration of Covenants

The covenants established in this Lease shall, without regard to technical classification and designation, be binding on Tenant and any successor in interest to the Property or any part thereof for the benefit and in favor of the Landlord, its successors and assigns, and the City. These covenants against discrimination shall remain in perpetuity.

ARTICLE 7 BUILDING AREAS AND MAINTENANCE OF THE PROPERTY

- 7.1 Maintenance of the Improvements. Tenant shall, at Tenant's expense, perform all routine and recurring maintenance necessary to keep the Theater and every part thereof in good condition, including the following: (i) maintenance of the public rest rooms (including repairs or replacements of tile or rest room fixtures); (ii) the maintenance of electrical systems serving the Theater and the repair and replacement of minor components thereof; (iii) maintenance of all pipes and plumbing systems serving the Theater, and the repair and replacement of minor components thereof; (v) the maintenance of all building service equipment serving the Theater, and the repair and replacement of minor components thereof, which equipment includes all HVAC equipment, conveyancing systems, and fire, life safety, and emergency equipment; and (vi) the maintenance of the Equipment. In no event shall Tenant permit a level of maintenance less than that required by the Restrictions. The Landlord shall maintain the exterior of the Complex.
- 7.2 <u>Common Area</u>. The Theater and Complex are part of a larger project undertaken by the City and the Agency, consisting of the Complex, the adjacent property which will be developed for housing, commercial or retail uses, and the Pickford Theater/Pickfair Complex, all of which together are referred to herein as the "Combined Project." That portion of the Combined Project which is not occupied by buildings is referred to as the "Common Area". The Restrictions and the Common Area Maintenance Agreement provide for maintenance of the Common Area, including, but not limited to, repair, replacement, cleaning and security related thereto, and provide for an allocation of the costs thereof to the Tenant and the adjacent owners benefitting from the Common Area. Tenant covenants to pay its allocable share thereof as determined under the Restrictions and the Common Area Maintenance Agreement.
- 7.3 <u>Downtown Maintenance Operations and Programming</u>. Tenant acknowledges that the Theater will be an integral part of the overall downtown revitalization effort currently being undertaken by Landlord, and Tenant agrees that it will participate fully in the activities, programs, operations and maintenance of the downtown area. Tenant agrees to join, participate in, and pay its proportionate share of the costs of, all those

downtown organizations, programs and activities, whether governmental or private, that Landlord, either as Landlord or as the Redevelopment Agency, shall reasonably determine. Further, Landlord and the City are contemplating the construction and installation of sidewalk, lighting, landscaping and street improvements on certain public rights of way adjacent to the Property (the "Public Improvements"). If the Public Improvements are developed, their construction and installation may be financed with long-term assessment bonds, and their maintenance may be paid from periodic assessments on benefitting property owners. However, particulars regarding the development and funding of the Public Improvements, if any, remain undecided. Tenant hereby (i) acknowledges that the Public Improvements may be developed and, if developed, maintained, (ii) agrees that it will not protest or oppose the development and maintenance of the Public Improvements. (iii) agrees that it will consent to, and not protest or oppose, the establishment of a special assessments district as authorized by California statutes for an assessment against the Property for its pro rata portion of the capital costs of acquiring, developing and maintaining the Public Improvements, and (iv) agrees that the assessment may be levied upon the Property, and that Tenant will pay its pro rata share thereof, as reasonably determined by Landlord.

ARTICLE 8 TENANT'S IMPROVEMENTS AND FIXTURES

The Theater, the Equipment, and all additions, alterations and improvements thereto shall remain the exclusive property of Landlord during the Term, subject to the rights of Tenant under this Lease. At the expiration or termination of this Lease, any improvements made by Tenant to the Theater, as to which Landlord consented in writing, shall become the property of Landlord in their then present condition, and Tenant shall not be obligated to restore the Property to their condition at the commencement of this Lease or the Term. Any changes to the Theater to which Landlord did not consent in writing shall, at Landlord's option, either become the property of Landlord in their present condition, or shall be removed by Tenant with the modified area of the Theater returned to its previous condition at Tenant's sole expense. Further, at the expiration or termination of this Lease, any Equipment and other personal property located in the Theater shall become the property of Landlord in their then condition, subject to the rights of lessors of personal property, such as IMAX, or senior lienholders.

ARTICLE 9 ALTERATIONS

9.1 Written Consent.

Except as otherwise herein provided in this Article 10, Tenant shall not make or suffer to be made any changes or additions to the Theater or Complex, including structural or nonstructural changes, without the express written consent of Landlord first had and obtained as to detailed plans and specifications of the proposed work. Any changes, alterations or additions in or on the Property and the Theater shall be at Tenant's sole cost and expense and shall become at once a part of the Complex. Upon the expiration or sooner termination of this Lease, and unless Landlord requests their removal.

such changes, alterations, or additions shall become Landlord's sole property and shall remain upon and be surrendered with the Property as a part thereof, without damage or injury.

9.2 Notice of Non-responsibility.

If Tenant makes any alterations as provided in this Article, the alterations shall not be commenced until ten (10) days after Landlord has received notice from Tenant stating the date work is to commence so that Landlord can post and record an appropriate notice of non-responsibility. Any alterations shall be made by a licensed contractor approved by Landlord.

ARTICLE 10 PAYMENT OF UTILITY SERVICES, TAXES, CHARGES AND FEES

10.1 <u>Public and Private Utility Services</u>

Tenant will pay or cause to be paid all charges for all public or private utility services and all sprinkler systems and interior protective services at any time rendered to or in connection with the Theater, or any part thereof, will comply with all contracts relating to such services, and will do all other things required for the maintenance and continuance of all such utility services which are within its control.] Under no circumstances will Landlord (in its capacity of Landlord, and not its possible capacity as a supplier of a utility) be held liable for any failure or defect in the supply of any utility. If any utility is not separately metered such that the bills therefor are for the entire Complex, Tenant shall pay such portion thereof as Landlord reasonably determines.

10.2 <u>Taxes, Assessments and Charges</u>

Tenant covenants to pay when due:

10.2.1 all applicable taxes, assessments (including, without limitation, all assessments for public improvements or benefits, water, sewer or other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case, whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every type of character (including all interest and penalties thereon), which at any time during or in respect of the Term hereof may be assessed, levied, confirmed or imposed on, or in respect of, or be measured by, or become a lien upon Landlord, the Complex, this Lease or any part thereof, or any estate, or right or interest therein; or upon the gross or net receipts from the Theater, or the earnings from the use or occupancy thereof, or

10.2.2 All other charges, levies, liens or similar devices made on the Theater or on either Landlord or Tenant in connection with the Theater, this Lease, or any matters contained herein.

In the event that any charge or assessment covered by this Section 10.2 is assessed against the Complex as a whole, Tenant shall pay such portion thereof as Landlord reasonably determines. If by law, any imposition may, at the option of the person on whom it is imposed, be paid in installments, Tenant may exercise such option.

10.3 <u>Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Lease Property</u>

In accordance with California Revenue and Taxation Code Section 107.6(a) and Health and Safety Code Section 33673, Landlord states that, while the parties hereto believe Tenant to be exempt, it is possible that by entering into this Lease a possessory interest in the Theater and/or the Equipment subject to property taxes may be created, and if so, that Tenant shall pay taxes upon the assessed value of the entire Property and not merely the assessed value of its leasehold interest. Tenant or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

ARTICLE 11 LIENS

11.1 Indemnification.

Tenant shall at all times indemnify, save and hold Landlord and the Theater free, clear and harmless from any claims, liens, demands, charges, encumbrances or litigation arising directly or indirectly out of any use, occupancy or activity of Tenant, or out of any work performed, material furnished, or obligations incurred by Tenant, in, upon, about or otherwise in connection with the Theater and/or the Complex and shall, except as hereinafter permitted in this Article 11, pay or cause to be paid for all work performed and material furnished to the Theater and/or the Complex which will or may result in a lien on the Theater or on the Landlord's Interest therein, and will keep the Theater and the Complex free and clear of all mechanic's liens and materialmen's liens (including the posting of an appropriate bond which shall release the lien) arising out of any action or work undertaken or authorized by Tenant.

11.2 Satisfaction of Liens.

Immediately upon entry of final judgment in any action in which Tenant contests any claim of lien, and if such final judgment shall establish the validity of the lien, or any part thereof, and within fifteen (15) days after notice of the filing of any lien for record which Tenant does not contest (or does contest, but for which Tenant has not posted an appropriate bond causing the release of the lien) Tenant shall fully pay and discharge such judgment or lien, as the case may be, and Tenant shall reimburse Landlord upon demand for any and all loss, damage and expense, including reasonable attorneys' fees, which Landlord may suffer or be put to by reason thereof. Nothing contained herein shall prevent Landlord, at the cost and for the account of Tenant, from satisfying any such

judgment or lien, as the case may be, in the event Tenant fails or refuses to satisfy the same as herein provided.

11.3 Notice to Landlord.

Should any claim or lien be filed against the Theater or Complex, or should any action or proceeding be instituted affecting the title to the Theater or the Complex, Tenant shall give Landlord written notice thereof as soon as Tenant obtains knowledge thereof.

ARTICLE 12 SIGNS

- 12.1 Tenant shall not place or suffer to be placed on the Property or upon the roof or any exterior door or wall or on the exterior or interior of any window of the Complex, of any sign, awning, canopy, marquee, advertising matter, decoration, lettering or other thing of any kind without the written consent of the Landlord first had and obtained.
- 12.2 Except as otherwise herein provided, Tenant shall have the right, at its sole cost and expense, to erect and maintain within the interior of the Theater all signs and advertising matter customary or appropriate in the management of an IMAX theater or other Large Format Theater venue.

ARTICLE 13 INDEMNIFICATION AND INSURANCE

- 13.1 Parties' Indemnification. Each Party ("Indemnifying Party") hereby indemnifies, holds harmless and agrees to defend the other Party ("Indemnified Party") from and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring in or at the Theater and on the ways immediately adjoining the Theater caused by the alleged active or passive negligence or willful misconduct of the Indemnifying Party, its agents, servants or employees; provided, the Indemnifying Party does not indemnify the Indemnified Party against any injury, loss of life, or damage which is caused by the active or passive negligence or willful misconduct of the Indemnified Party, its or their agents, servants or employees or of another tenant of the Complex or of such tenant's agents, servants or employees. The Parties' obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or termination of this Lease, as to claims arising or accruing prior to the expiration or termination of this Lease.
- 13.2 <u>Liability Insurance Coverage and Limits</u>. Tenant agrees to maintain, and/or cause to be maintained, at no cost to Landlord, liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Theater and the ways immediately adjoining the Property, with a "Combined Single Limit" (covering personal injury liability, bodily injury liability and property damage liability) of not less than One Million Dollars (\$1,000,000.00) Landlord,

its officials, employees and agents shall be covered as additional insureds with respect to liability arising from activities performed by or on behalf of Tenant. The insurance limits in this Section shall be subject to increase from time to time by such amounts as Landlord and Tenant may reasonably agree is necessary or desirable, as may be evidenced by the practice of similarly situated properties. In the event that Landlord determines that its liability coverage for the Complex includes coverage for the Theater, then the Landlord may waive this requirement.

- 13.3 <u>Contractor's Insurance</u>. During the period of any construction on the Theater by or at the request of any Party, such Party shall obtain or cause to be obtained, and thereafter maintained so long as such construction activity is occurring; at least the following minimum insurance overages:
 - 13.3.1 Workers' compensation statutory limits;
 - 13.3.2 Employer's liability \$1,000,000; and
- 13.3.3 Comprehensive General and Commercial Automobile Liability covering personal injury, bodily injury, and property damage of not less than One Million Dollars (\$1,000,000.00) including Independent Contractor's Liability or Owner's Protective Liability; Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work; "XCU" Hazard Endorsement, if applicable; "Broad Form" Property Damage; "Personal Injury"; and "Blanket Contractual Liability." Landlord, Tenant and their officials, employees and agents shall be covered as additional insureds with respect to liability arising from activities performed by or on behalf of contractor.
- 13.4 Property Insurance (Fire Insurance). At the inception of this Lease, the Property is adequately insured against fire and other casualty loss, and the parties agree that Tenant shall not be required to provide insurance for fire or other casualty risk so long as the Agency does so. In the event that, for any reason, the Agency ceases to provide such insurance, then Tenant will do so, without cost to the Agency. Such insurance will cover the Theater and insure against loss or damage by fire and the perils normally covered under the standard extended coverage endorsement for not less than the "full replacement cost" thereof, including all improvements, alterations, additions and changes made by Tenant. The Agency shall be named as an additional insured on the policy.
- 13.5 <u>Policy Requirements</u>. Any required insurance may be in the form of blanket coverage, so long as such blanket policy does not reduce the limits nor diminish the coverage required herein. Any insurance policy required to be maintained and/or caused to be maintained by Tenant under this Article shall be written by insurance companies reasonably satisfactory to Landlord. Upon request, Tenant shall cause certificates of insurance reasonably evidencing compliance with the requirements of this Article to be delivered to Landlord. The insurance policies and certificates required by this Article shall contain a provision requiring the insurance company to furnish Landlord 30

days prior written notice of any cancellation or lapse, or the effective date of any reduction in the scope of coverage.

- 13.6 <u>Performance of Indemnity Agreements</u>. All policies of liability insurance shall insure the performance by Landlord or Tenant, as the case may be, of the indemnity agreements contained herein. Each Party shall promptly notify the other Party of any asserted claim with respect to which such Party is or may be indemnified against hereunder and shall deliver to such other Party copies of process and pleadings.
- 13.7 <u>Damages for Failure to Provide Insurance</u>. This Section 13.7 is applicable only in the event that Tenant is not in compliance with the requirements to maintain insurance as set forth in this Article 13. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Complex, occurring during any period in which Tenant shall have failed or neglected to provide insurance as aforesaid.

ARTICLE 14 DAMAGE OR DESTRUCTION

14.1 Reconstruction and/or Removal. Should any improvements on the Property be damaged or destroyed by fire or other casualty or any other cause whatsoever, Landlord shall elect, in its sole discretion, to either repair the Theater or cancel this Lease and shall provide notice of its election within thirty (30) days after such damage. In the event Landlord elects to repair the Theater, the work shall begin promptly and be carried out without delay, regardless of when Landlord elects to repair the Theater. Any insurance proceeds received by Lessee under the property casualty policy required to be carried by Tenant hereunder, shall be disbursed to the Landlord to the extent necessary to compensate Landlord for the value of the Theater structure, Complex and any fixtures, equipment or inventory which would belong to Landlord with the termination of this Lease. The remaining balance of such insurance proceeds, if any, shall be payable to the Tenant.

ARTICLE 15 CONDEMNATION

15.1 <u>General.</u> If any portion of or interest of the Property shall be condemned (including, without limitation, inverse condemnation) or taken by any public authority or by any other person or entity with the power of condemnation, by eminent domain or by purchase in lieu thereof (a "Taking"), and such Taking renders the Property unsuitable in Tenant's reasonable judgment for Tenant's business operations, Tenant may terminate this Lease by giving notice to Landlord, such termination to be effective as of the

date specified in such notice. Landlord agrees not to voluntarily convey any portion of the Property in lieu of condemnation without Tenant's prior written consent.

15.2 <u>Award.</u> Whether or not this Lease is terminated as a result of any Taking, Tenant shall not share in the condemnation award, or share in severance damages if less than the whole shall be so taken. If Tenant elects not to terminate this Lease in the event of a partial Taking, no offset to Rent shall be made as a result of the Taking.

ARTICLE 16 ASSIGNMENT AND SUBLETTING

- 16.1 <u>Prior Written Consent</u>. Tenant may not assign or sublet, without Landlord's prior written consent, all or any portion of its interest in this Lease. Provided, however, that Tenant may grant such licenses and concessions, as Tenant, in its reasonable commercial judgment, determines are appropriate and enhance the operation and success of the Theater; and provided further that Tenant complies with the provisions of this Article 16.
- 16.2 <u>Attorn to Landlord</u>. Each such licensee or concessionaire shall contain a provision, satisfactory to Landlord, requiring the sublessee to attorn to Landlord, or any mortgagee, or any person designated in a notice from leasehold mortgagee, provided that such mortgagee permits the licensee or concessionaire to remain undisturbed.
- 16.3 <u>Identity of Sublessee</u>. Tenant shall, promptly after execution of each license or concession agreement, notify Landlord of the name and mailing address of the sublessee and shall, on demand, permit Landlord to examine and copy the sublease.
- 16.4 <u>Prepaid Rent</u>. Tenant shall not accept, directly or indirectly, more than two months' prepaid rent from any licensee and concessionaire.
- 16.5 Assignment of Landlord's Interest in Lease or the Leased Premises. Landlord may convey, transfer, sell, assign or otherwise transfer the Property, this Lease, all or a portion of its interest thereunder, and/or all or a portion of the payments that are payable to it by Tenant pursuant to this Lease. Tenant hereby consents and agrees to any such transfer which Landlord considers necessary or proper, regardless of the reason or reasons for which Landlord makes such Transfer and regardless of the entity that is the Transferee thereunder.

ARTICLE 17 HYPOTHECATION

17.1 Mortgage By Landlord. Landlord represents, warrants and covenants that this Lease (and any new lease entered into pursuant to this Article) is and shall be prior and superior to any mortgage, deed of trust or other financing document created by or through Landlord affecting Landlord's Interest in the Property. Landlord may, at any time and from time to time, subject to the terms and conditions of this Lease, mortgage or otherwise hypothecate its fee estate and/or its interest or rights hereunder, or any part

thereof. No such mortgagee, trustee or beneficiary under a deed of trust, for holder of the rights and interest of Landlord hereunder ("Landlord's Lender") shall be or become liable to Tenant solely as a result of an assignment of this Lease as security.

ARTICLE 18 PERFORMANCE OF TENANT'S COVENANTS

18.1 Right of Performance.

If Tenant shall at any time fail to pay any Imposition or other charge in accordance with Article 10 hereof, within the time period therein permitted or shall fail to pay for or maintain any of the insurance policies provided for in Article 13 hereof, within the time therein permitted, or to make any other payment or perform any other act on its part to be made or performed hereunder, within the time permitted by this Lease, then Landlord, after 30 days' written notice to Tenant (or, in case of an emergency, on such notice, or without notice, as may be reasonable under the circumstances) and without waiving or releasing Tenant from any obligation of Tenant hereunder, may (but shall not be required to):

- 18.1.1 Pay such Imposition or other charge payable by Tenant pursuant to the provisions of Article 10 hereof, or
- 18.1.2 Pay for and maintain such insurance policies provided for in Article 13 hereof, or
- 18.1.3 Make such other payment or perform such other act on Tenant's part to be made or performed as in this Lease provided.

18.2 Reimbursement and Damages.

All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Interest Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost or expense, shall constitute an obligation payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Complex, occurring during any period in which Tenant shall have failed or neglected to provide insurance as aforesaid.

ARTICLE 19 HAZARDOUS MATERIALS

- 19.1 <u>Landlord's Representations and Warranties</u>. Except as identified by Landlord in writing to Tenant as known environmental conditions prior to the execution of this Lease, Landlord makes no representation or warranty regarding the condition of the Property, its soils, geology or fitness for construction of the Complex.
- 19.2 No use of Hazardous Materials on the Property. Tenant covenants and agrees that it shall not, and that it shall not permit any licensee to, treat, use, store, dispose, release, handle or otherwise manage Hazardous Materials on the Property except in connection with any construction, operation, maintenance or repair of the Complex or in the ordinary course of its business, and that such conduct shall be done in compliance with all applicable federal, state and local laws, including all Environmental Laws. Tenant's violation of the foregoing prohibition shall constitute a breach hereunder and Tenant shall indemnify, hold harmless and defend the Landlord for such violation as provided below.
- 19.3 <u>Notice and Remediation by Tenant</u>. Tenant shall promptly give the Landlord written notice of any significant release of any Hazardous Materials, and/or any notices, demands, claims or orders received by Tenant from any governmental agency pertaining to Hazardous Materials which may affect the Property.
- 19.4 Environmental Indemnity. Tenant hereby agrees to hold harmless, defend and indemnify Landlord and City and their employees, members and officials from and against all liability, loss, damage, costs, penalties, fines and/or expenses (including attorney's fees and court costs) arising out of or in any way connected with the (1) Tenant's breach or violation of any covenant, prohibition or warranty in this Lease concerning Hazardous Materials, or (2) the activities, acts or omissions of Tenant, its employees, contractors or agents on or affecting the Property from and after the Possession Date, including but not limited to the release of any Hazardous Materials or other kinds of contamination or pollutants of any kind into the air, soil, groundwater or surface water on, in, under or from the Property whether such condition, liability, loss, damage, cost, penalty, fine and/or expense shall accrue or be discovered before or after the termination of this Lease. This indemnification supplements and in no way limits the scope of the indemnification set forth in Article 14.
- 19.5 Release. Tenant waives, releases, acquits and forever discharges Landlord and City, their employees, members and officials or any other person acting on behalf of Landlord or City, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, or compensation (collectively "Claims") whatsoever including, but not limited to, all Claims at common law and/or under any Environmental Law and/or any of the regulations or guidelines adopted or promulgated pursuant to an Environmental Law, whether direct or indirect, known or unknown, foreseen or unforeseen, which Tenant has as of the Possession Date on account of or in any way growing out of or in connection with any Hazardous Materials or other conditions on, in, under, from, or affecting the Property, or any law or regulation applicable thereto. Tenant

is hereby subrogated to any and all rights possessed by Landlord against third parties with respect to said Claims.

19.6 <u>Termination</u>. The agreements and obligations of Tenant under this Article 19 with regard to indemnification of Landlord shall survive the scheduled termination or sooner expiration of the Term for any reason, for five (5) years and all claims relating thereto must be delivered in writing to Tenant within such period.

ARTICLE 20 REPRESENTATIONS AND WARRANTIES

20.1 Landlord's Representations and Warranties.

Landlord represents and warrants to Tenant that:

- 20.1.1 Landlord owns the Property in fee simple subject only to encumbrances of record and any outstanding taxes which may presently be due and owing, and other matters affecting title which do not inhibit, prevent or impair the operation, maintenance or use of the Complex.
- 20.1.2 Landlord has full right and authority to grant the estate and the other rights demised herein and to execute and perform all of the terms and conditions of this Lease.
- 20.1.3 Tenant, upon performing and complying with all covenants, agreements, terms and conditions of this Lease to be performed or complied with by it, shall peaceably and quietly have, hold and enjoy the full possession and use of the Property and the easements, rights-of-way, rights, privileges, benefits and appurtenances belonging thereto throughout the Term.
- 20.1.4 As of the Possession Date there are no leases or other agreements affecting the Property which conflict with the terms of this Lease or the rights granted to Tenant hereunder, and except for those matters of record, the Property is free and clear of all restrictions, agreements, encumbrances, liens, assessments, rights-of-way and easements.
- 20.1.5 Landlord has the power and authority to enter into this Lease and perform all the obligations of Landlord hereunder.
 - 20.2 Tenant's Representations and Warranties.

Tenant represents and warrants to Landlord that:

20.2.1 Tenant has examined the Theater and finds that it is fit for use as a Theater or other Large Format Theater venue in accordance with this Lease.

- 20.2.2 Tenant acknowledges that Landlord has not made any representations or warranties regarding the condition of the Property, or its suitability for the operation and maintenance of the Theater contemplated by this Lease.
- 20.2.3 Tenant shall continuously operate the Complex as a Theater or other Large Format Theater venue. Provided, however, that (a) the Theater may be closed for routine maintenance for a term not to exceed seven (7) days in any calendar year, (b) the Theater may be closed in the event the Complex is damaged or destroyed by a casualty for a term as provided at Article 14, <u>Damage or Destruction</u>, and (c) the Complex may be closed for economic reasons during the off-season with the prior written consent of Landlord, which consent shall not unreasonably be withheld. Should Tenant propose to close the Complex for economic reasons, Tenant shall deliver to the Executive Director of Landlord, at least sixty (60) days prior to such proposed closure, a request that Landlord permit such closure together with such financial information as Landlord may reasonably request.
- 20.2.4 Tenant has the right, power and authority to enter into this Lease and to perform all the obligations of Tenant hereunder.
- 20.2.5 Tenant is a California corporation in full compliance with the provision of the California Corporation Law (California Corporation Code Section 17000 et seq.).

ARTICLE 21 EVENTS OF DEFAULT: REMEDIES

or

- 21.1 <u>Events of Default</u>. Any one or all of the following events shall constitute an Event of Default hereunder:
- 21.1.1 If Tenant shall default in the payment of any Rent when and as the same becomes due and payable and such default shall continue for more than thirty (30) days after Landlord shall have given written notice thereof to Tenant; or
- 21.1.2 Default by Tenant under any of the IMAX Agreement, the Assignment of IMAX Agreement or the IMAX Security Agreement; or
- 21.1.3 The failure to operate the Theater as an IMAX theater or other Large Format Theater venue for a period as required by this Lease (especially as set forth at Section 21.2.3 above); or
 - 21.1.4 The abandonment or vacation of the Theater by Tenant;
- 21.1.5 The entry of any decree or order for relief by any court with respect to Tenant, or any assignee or transferee of Tenant (hereinafter "Assignee"), in any involuntary case under the Federal Bankruptcy Code or any other applicable federal

or state law; or the appointment of or taking possession by any receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any Assignee, or of any substantial part of the property of Tenant or such Assignee, or the ordering or winding up or liquidating of the affairs of Tenant or any Assignee and the continuance of such decree or order unstayed and in effect for a period of sixty (60) days or more (whether or not consecutive); or the commencement by Tenant of any such Assignee of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal law or consent by Tenant or any such Assignee to the entry of any order for relief in an involuntary case under any such law, or consent by Tenant or any such Assignee to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any such Assignee, or of any substantial property of any of the foregoing, or the making by Tenant or any such Assignee of any general assignment for the benefit of creditors; or Tenant or any such Assignee takes any other voluntary action related to the business of Tenant or any such Assignee or the winding up of the affairs of any of the foregoing; or

- 21.1.6 If Tenant shall default in the performance of or compliance with any other material term, covenant or condition of this Lease and if Tenant shall fail to cure such nonmonetary default within 30 days after receipt of written notice thereof from Landlord, or, if the default is of such character as to require more than 30 days to cure and Tenant shall fail to use reasonable diligence in curing such default; or
- 21.1.7 If Tenant shall default under the terms of that certain Grant Agreement by Tenant and Landlord, or any subsequent Grant Agreement entered into between Tenant and Landlord during the Term.

21.2 Remedies.

- 21.2.1 If an Event of Default shall occur and continue as aforesaid, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and bring suit against Tenant and recover as an award in such suit the following:
 - a. the worth at the time of award of the unpaid rent for the Lease Year and all other sums due hereunder which had been earned at the time of termination:
 - b. the worth at the time of award of the amount by which the unpaid Rent and all other sums due hereunder which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;
 - c. the worth at the time of award of the amount by which the unpaid Rent and all other sums due hereunder for the balance of the

Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;

- d. any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things could be likely to result therefrom; and
- e. such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.
- 21.2.2 The "worth at the time of the award" of the amounts referred to in Subparagraphs 21.2.1.1 and 21.2.1.2 above shall be computed by allowing interest at the Interest Rate. The "worth at the time of award" of the amount referred to in subparagraph 21.2.3 above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).
- 21.2.3 If an Event of Default occurs, Landlord shall also have the right, with or without terminating this Lease, to reenter the Theater and remove all persons and property from the Theater; property other than property which is the subject of either the Assignment of IMAX Agreement or the IMAX Security Agreement, may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. Landlord's rights with respect to property which is the subject of either the Assignment of IMAX Agreement or the IMAX Security Agreement shall be governed by those agreements.
- 21.2.4 If an Event of Default occurs, Landlord shall also have the right, with or without terminating this Lease, to relet the Theater. If Landlord so elects to exercise its right to relet the Property but without terminating this Lease, then rentals received by Landlord from such reletting shall be applied: First, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; Second, to the payment of any cost of such reletting; Third, to the payment of the cost of any alterations and repairs to the Theater; Fourth, to the payment of rent due and unpaid hereunder; and Fifth, the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should the amount of rental received from such reletting during any month which is applied to the payment of rent hereunder be less than that agreed to be paid during that month by Tenant hereunder. then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making alterations and repairs not covered by the rentals received from such reletting.

21.2.5 No reentry or taking possession of the Theater by Landlord pursuant to Paragraphs 21.2.3 or 21.2.4, shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Tenant because of any default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such default.

21.3 Assignment of Licenses and Concessions.

- 21.3.1 Tenant hereby assigns to Landlord, as security for the performance by Tenant of its obligations hereunder, all of the rents from licensees or concessionaires of Tenant in the Theater and hereby gives to and confers upon Landlord the right, power and authority to collect such rents. Tenant irrevocably appoints Landlord its true and lawful attorney-in-fact, at the option of Landlord, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in its name or in the name of Tenant, for all such rents, and apply the same to amounts owing under this Lease; provided, however, that Tenant shall have the right to collect such rents (but not more than two months in advance unless the written approval of Landlord has first been obtained), and to retain and enjoy the same, so long as an Event of Default shall not have occurred hereunder and be continuing. The foregoing power of attorney is coupled with an interest and cannot be revoked.
- 21.3.2 Upon the occurrence and during the continuance of an Event of Default hereunder, Landlord may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the obligations hereby secured, in its own name sue for or otherwise collect such rents (including those past due and unpaid, and all prepaid rents and all other monies which may have been or may hereafter be deposited with Tenant by any licensee or concessionaire of Tenant to secure the payment of any rent or other obligations owing under its sublease, and Tenant agrees that, upon the occurrence and during the continuance of any Event of Default hereunder, Tenant shall promptly deliver all such rents and monies to Landlord), and Landlord shall apply the same, less costs and expenses of operation and collection (including, without limitation, reasonable attorneys' fees whether or not suit is brought or prosecuted to judgment) to any Rent or obligation of Tenant which is then owing, and in such order as Landlord may determine. The collection of such rents, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default or be deemed or construed to make Landlord such licensee or concessionaire's landlord.
- 21.4 Receipt of Rent, No Waiver of Default. The receipt by Landlord of the Rents or any other charges due to Landlord, with knowledge of any breach of this Lease by Tenant or of any default on the part of Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provisions of this Lease. No acceptance by Landlord of a lesser sum than the rents or any

other charges then due shall be deemed to be other than on account of the earliest installment of the rents or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent or charges due be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in this Lease. The receipt by Landlord of any Rent or any other sum of money or any other consideration paid by Tenant after the termination of this Lease, or after giving by Landlord of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Lease, reinstate, continue, or extend the term of this Lease, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by Landlord to Tenant prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Property or the Complex, excepting only an agreement in writing signed by Landlord accepting or agreeing to accept such a surrender.

- 21.5 <u>Effect on Indemnification</u>. Notwithstanding the foregoing, nothing contained in this Article shall be construed to limit Landlord's right to indemnification as otherwise provided in this Lease.
- 21.6 <u>Notice of Landlord's Default; Tenant's Waiver</u>. Landlord shall not be considered to be in default under this Lease unless (1) Tenant has given notice specifying the default and (2) Landlord has failed for thirty (30) days to cure the default, if it is curable, or to institute and diligently pursue reasonable corrective or ameliorative acts for noncurable defaults. Tenant waives the protections of Civil Code Sections 1932 and 1933.

ARTICLE 22 PERMITTED CONTESTS

Tenant, at no cost or expense to Landlord, may contest (after prior written notice to Landlord), by appropriate legal proceedings conducted with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien or any Legal Requirement or Insurance Requirement, provided that (a) in the case of liens of mechanics, materialmen, suppliers or vendors, or Impositions or liens therefor, such proceedings shall suspend the collection thereof from Landlord, and shall suspend a foreclosure against the Property and/or the Complex, any interest therein; (b) neither the Property or the Complex, nor any part thereof or interest therein, would be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of a Legal Requirement, Landlord would not be in any danger of any criminal liability or, unless Tenant shall have furnished a bond or other security therefor satisfactory to Landlord, any additional civil liability for failure to comply therewith and the Property and Complex would not be subject to the imposition of any lien as a result of such failure; and (d) Tenant shall have furnished to Landlord, if requested, a bond, or other security, satisfactory to Landlord. If Tenant shall fail to contest any such matters, or to give Landlord security as hereinabove provided, Landlord may, but shall not be obligated to, contest the matter or settle or compromise the same without inquiring into the validity or the reasonableness thereof. Landlord, at the sole cost and expense of Tenant, will cooperate with Tenant and execute any documents or pleadings legally required for any such contest.

ARTICLE 23 ENTRY BY LANDLORD

Landlord and its respective authorized representatives shall have the right to enter the Theater at all reasonable times for the purpose of inspecting the same and to take all such action thereon as may be necessary or appropriate for any such purpose provided for under this Lease (but nothing contained in this Lease shall create or imply any duty on the part of Landlord to make any such inspection or to do any such work). No such entry shall constitute an eviction of Tenant.

ARTICLE 24 FORCE MAJEURE

The failure of the Tenant to operate the Theater as a Theater or other Large Format Theater venue due to any of the following causes shall be excused: any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any department or agency thereof, or civil or military authority; acts of God; acts or omissions of Landlord or its agents or employees; fire, explosion or floods; strikes, walkouts or inability to obtain materials; war, riots, sabotage or civil insurrection; or any other causes beyond the reasonable control of Tenant. The additional grace period or extension of time provided above shall be equal to the period of delay caused by the above-described event, which period shall commence to run from the time of the commencement of the cause for delay and shall terminate upon termination of that cause. A Party wishing to invoke this Section must notify in writing the other Party to this Lease of that intention within sixty (60) days of the commencement of any such cause for delay and shall, at that time, specify the reasons therefor, the specific provision of this Lease which will be delayed as a result, and the period of such extension, if known, or if not known, a reasonable estimate thereof. Absent such notification, no such additional grace period or extension of time shall be provided.

ARTICLE 25 MEMORANDUM OF LEASE

Concurrently with the delivery of this Lease, the Parties will execute, have acknowledged and record a Memorandum of Lease in form acceptable to the Parties.

ARTICLE 26 PARKING

26.1 Offsite Parking. The Complex has a parking demand which is not accommodated on-site. As a part of the integrated mixed use downtown, the Complex parking is part of public, non-exclusive joint use parking at various locations in or adjacent to the Downtown Core Project, and includes a parking structure. The cost of the initial construction of such parking was borne by City and the Agency, but Tenant shall bear a share of the development and construction cost thereof, by virtue of the Parking Structure

contained herein. Tenant hereby consents to, and agrees to take, any and all actions necessary on the part of Tenant to implement the finance mechanism selected and/or approved by City or the Agency in connection with such parking facilities, including, without limitation, a parking or assessment district, all as set forth in the Parking Plan Agreement, as hereinafter defined.

- 26.2 <u>Parking Plan Agreement</u>. The full details of the parking for the Downtown Core Project shall be set forth in a "Parking Plan Agreement", a copy of which is available at the offices of Landlord. The Parking Plan Agreement addresses, among other things, (i) the location, schedule and method of construction, maintenance and use of all parking areas for the Combined Project, (ii) the share of the Parking Revenues attributable to the Property, and (iii) the manner in which any shortfalls in the Parking Revenues shall be treated. Tenant covenants to pay any and all fees, charges, assessments or other costs imposed by the Parking Plan Agreement, as applicable to the Theater. If there is a conflict between the terms of this Lease and the Parking Plan Agreement, the terms of the Parking Plan Agreement shall prevail.
- 26.3 <u>Funding of the Parking Plan Agreement</u>. Parking in the Downtown Core Project, of which the Complex is a part, is funded only from parking revenues generated in the Combined Project, and neither the Agency nor the City is required to provide funding for parking in excess of the parking revenues received by the Agency or the City from the Combined Project for that purpose, or as otherwise set forth in the Parking Plan Agreement. Funding includes ticket surcharges on theater tickets, and payments from owners of properties in the Combined Project.

The portion of the financial cost of the construction, operation and/or maintenance of such parking facilities to be borne by Tenant are hereby agreed to be reasonably proportionate to the benefit derived by Tenant from such facilities, and shall be payable over the term of the Parking Plan Agreement.

- 26.4 Parking District. The Agency and the City will explore the feasibility of creating a parking assessment district, or other similar mechanism, which would result in the Parking Revenues being levied and paid as part of the property tax assessed upon the properties in the Combined Project. If such a district or other mechanism is determined to be feasible, and the Agency or the City determines to proceed with such a district, Tenant will cooperate with and consent to the legal process necessary for the creation of such a district, including casting favorable votes in any election necessary to implement such a district.
- 26.5 <u>Maintenance Fees</u>. The Restrictions impose on the property owners in the Combined Project, and/or upon the Downtown Merchants Association, the obligation to maintain, repair and operate the parking which has been or will be hereafter developed by the Agency or the City for the Combined Project. The cost of such maintenance, repair and operation will be funded by common area maintenance revenues contributed from the properties in the Combined Project.

- 26.6 Parking Fees. The properties in the Combined Project will cumulatively contribute not less than \$450,000 (the "Parking Revenues") per year toward the provision of parking in the Downtown Core Area and toward the resolution of certain housing obligations of the Agency in the Downtown Core Project. The Parking Revenues will be derived from ticket surcharges (the "Parking Surcharge") of \$.25 per ticket on ticket sales at the Theater and the multi-plex theater to be constructed in the area, and from a \$.10 per square foot charge per month to be paid by the subtenants of the Complex (other than the theaters) based upon such subtenant's leasable square footage, and the other property owners in the Combined Project. The \$.10 per square foot charge per month does not apply to the Theater. In the event that a parking district or other legal mechanism is implemented to fund parking, Tenant will pay the full cost of its proportionate share of parking costs (the "Parking Assessment") as allocated by that legal mechanism. In the event the Parking Assessment levied against the Complex is less than the Parking Surcharge, the Tenant shall only be obligated to pay the Parking Assessment and not the Parking Surcharge for the Complex shall be adjusted in an amount equal to the percentage change in the consumer price index applicable to the Coachella Valley every five (5) years. The base year for Consumer Price Index adjustment shall be December 31, 1998, and the first adjustment shall be effective January 1, 2004.
- 26.7 Payment of the Parking Fee. The Parking Plan Agreement provides that the Parking Fee shall be paid on a quarterly basis. Tenant shall deliver to Landlord within thirty (30) days following the close of each Lease Year Quarter (i) a statement certified as being true and correct by an executive officer of Tenant and setting forth the number of Ticket sales for the preceding Lease Year Quarter together with the computation of the Parking Fees for such quarter made in accordance with the provisions of this Lease, and (ii) a check payable to Landlord in the amount of the Parking Fees so computed. Any shortfall or overpayment shall be adjusted within 60 days after the end of the Lease Year in conjunction with the reporting for and payment of Participation Rent.
- 26.8 Merchant's Association. Tenant is required as a condition of this Lease to become a member of the Downtown Merchants Association (the "Association"). Such membership will bind the Tenant to the rules and regulations of the Association and Tenant covenants, as a material condition of this Lease, to fully observe all such rules and regulations, including, without limitation, rules and regulations concerning each tenant's participation in marketing, promotion and special events and activities, and to pay such assessments as may be required under the rules and regulations of the Association. Tenant agrees to participate in special events sponsored by the Association or in which the Association participates. Tenant agrees to participate in, and pay Tenant's proportionate share of, joint promotional and/or advertising efforts undertaken by the Association. Tenant further agrees to join, participate in, and pay its proportionate share of the costs of, all downtown organizations, programs and activities, whether governmental or private in nature, as requested by the City of Cathedral City or Landlord as the Redevelopment Agency of the City of Cathedral City of all merchants and tenants in the downtown core area.

ARTICLE 27 MISCELLANEOUS

27.1 <u>Notices</u>. All notices and other communications hereunder shall be in writing, shall be sent by first class registered or certified United States mail, postage prepaid, and shall be deemed to have been given two (2) days after the day of mailing, addressed (a) if to Landlord;

The Redevelopment Agency of the City of Cathedral City 68-700 Avenida Lalo Guerrero Cathedral City, California 92234 Attn: Executive Director

With a copy to:

City Attorney's Office City Hall 68-700 Avenida Lalo Guerrero Cathedral City, California 92234

or at such other addresses as Landlord shall have furnished to Tenant; and

(b) if to Tenant;	

or at such other addresses as Tenant shall have furnished Landlord in writing.

- 27.2 <u>No Claims Against Landlord</u>. Nothing contained in this Lease shall constitute any consent or request by Landlord, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord or its interest in the Property in respect thereof.
- 27.3 <u>Indemnification of Landlord</u>. Tenant acknowledges that the Restrictions, the Parking Plan Agreement and the Common Area Maintenance Agreement (collectively, the "Overlay Agreements") will levy dues, fees and charges against Tenant, and that Landlord will not be responsible to pay any dues, fees or charges on account of the Overlay Agreements or any of them which pertain to the Theater, recognizing that some of such costs may have to be allocated between the Theater and other portions of the Property. Tenant hereby agrees to indemnify, defend and hold harmless Landlord and its officials, employees, board members, agents, and representatives from and against any

loss, cost, damage or liability, including, without limitation, attorneys' fees, which results from or may be imposed by the Overlay Agreements.

- 27.4 <u>Inspection</u>. Landlord and its authorized representatives may enter the Property or any part thereof at all reasonable times for the purpose of inspecting, servicing or posting notices, protecting the Property or the Complex, or for any other lawful purposes, including showing the Property to prospective purchasers or tenants and placing on the Property customary "for rent" or "for lease" signs.
- 27.5 <u>Audit</u>. Tenant shall keep full and accurate books of account, records and other pertinent data with respect to operations of the Theater and the sale of Tickets. Such books of account, records, and other pertinent data shall be kept for a period of 3 years after the end of each Lease Year. The receipt by Landlord of any statement of Rent or Participation Rent for any Lease Year, or any payment of Parking Fees or District Assessments, or any payment thereof to Landlord, shall not bind Landlord as to the correctness of the statement or the payment.

Landlord shall be entitled within 2 years after the end of each Lease Year to inspect and examine all Tenant's books of account, records, and other pertinent data, so Landlord can verify that the amount of any Rent or Participation Rent is in conformity with this Lease. Tenant shall cooperate fully with Landlord in making the inspection.

If an audit shows that there was a deficiency in payment of Rent, the deficiency shall become immediately due and payable. The costs of an audit performed by Landlord or its agents or representatives shall be paid by Landlord unless the audit shows that Tenant understated Rent by more than 3%, in which case Tenant shall pay all Landlord's costs of the audit.

- 27.6 <u>Successors</u>. All of the rights and obligations of the Parties under this Lease shall bind and inure to the benefit of the respective heirs, personal representatives, successors, grantees and assigns of the Parties and the restrictions, covenants and obligations pertaining to the Property shall run with the land and shall continue until this Lease is terminated or expires.
- Attorney's Fees. If either party to this Lease shall bring any action, suit, counterclaim, appeal, arbitration, or mediation for any relief against the other, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (collectively, an Action), the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs (at the prevailing party's attorneys' then-prevailing rates as increased from time to time by the giving of advance written notice by such counsel to such party) incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling, or award (collectively, a Decision) granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in such Action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such Decision. The court or arbitrator may fix the amount of reasonable at-

torneys' fees and costs on the request of either party. For the purposes of this paragraph, attorneys' fees shall include, without limitation, fees incurred in the following: (1) postjudgment motions and collection actions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation. "Prevailing party" within the meaning of this paragraph includes, without limitation, a party who agrees to dismiss an Action on the other party's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought by it. Nothing contained in this Section shall be interpreted to mean that Landlord has agreed to arbitrate any dispute which may arise hereunder.

- 27.8 <u>Integration</u>. This Lease, and the exhibits attached hereto, are the entire agreement between and final expression of the parties, and there are no agreements or representations between the parties except as expressed herein or therein. All prior negotiations and agreements between Landlord and Tenant with respect to the subject matter hereof are superseded by this Lease. Except as otherwise provided herein, no subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties hereto.
- 27.9 <u>Survival of Representations, Warranties and Covenants</u>. The respective representations, warranties and covenants contained herein shall survive the Possession Date and continue throughout the Term.
- 27.10 <u>No Merger</u>. There shall be no merger of this Lease or of the leasehold estate created by this Lease with the fee or any other estate or interest in the Property by reason of the fact that the same person owns or holds, directly or indirectly, all such estates and interests or any combination thereof.
- 27.11 No Waiver By Landlord. To the extent permitted by applicable law, no failure by Landlord to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a default under this Lease, and no acceptance of rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. No waiver of any default shall affect or alter this Lease, which shall continue in full force and effect, or the rights of Landlord with respect to any other then existing or subsequent default.
- 27.12 <u>Amendment</u>. This Lease can be modified, supplemented, amended or rescinded only by a writing expressly referring to this Lease and signed by Landlord and Tenant.
- 27.13 Severability; Consent. If any term of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term shall not be affected thereby. Unless otherwise expressly provided herein, any approval or consent of Landlord required hereunder shall not be unreasonably withheld or delayed. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors of the parties hereto. The headings in and the table of contents of this Lease are for purposes of reference only and

shall not limit or define the meaning hereof. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

- 27.14 <u>Holding Over</u>. In the event Tenant shall holdover or remain in possession of the Property or the Complex with the consent of Landlord after the expiration of the Term of this Lease, such holding over or continued possession shall create a tenancy for month to month only, upon the same terms and conditions as are herein set forth so far as the same are applicable, except that Tenant shall pay to Landlord fair market rent for the Property.
- 27.15 <u>No Partnership</u>. Anything contained herein to the contrary notwithstanding, Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or member of a joint enterprise with Tenant hereunder.
- 27.16 <u>Warranty Against Payment of Consideration</u>. Tenant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.
- 27.17 Non-liability of Landlord Officials and Employees: Nonliability of Members. No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successor or on any obligations under the terms of this Lease. In addition, no member of Tenant shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successor or on any obligations under the terms of this Lease, except as may be expressly provided by the DDA.
- 27.18 <u>Remedies Cumulative</u>. The various rights, options, elections and remedies of Landlord and Tenant, respectively, contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.
- 27.19 <u>Time of the Essence</u>. Time is of the essence of this Lease and all of the terms, provisions, covenants and conditions hereof.
- 27.20 <u>Pronouns</u>. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution or substitutions.

27.21 Interpretation.

- 27.21.1 <u>Law</u>. The laws of the State of California shall govern the validity, construction and effect of this Lease.
- 27.21.2 <u>Covenants</u>. Whenever in this Lease any words of obligation or duty are used in connection with either party, such words shall have the same force and effect as though framed in the form of express covenants on the part of the party obligated.
- 27.21.3 <u>Joint and Several Liability</u>. In the event either party hereto now or hereafter shall consist of more than one person, firm or corporation, then and in such event all such persons, firms or corporations shall be jointly and severally liable as parties hereunder.
- 27.22 <u>Attachments</u>. All attachments referred to in this Lease are attached to and incorporated herein by reference.
- 27.23 <u>Payments to Third Parties</u>. Any payment due from Tenant hereunder will be made directly to third party payees if the Landlord should so direct in writing.

ARTICLE 28 DEFINITIONS

The capitalized terms used herein, and not otherwise defined herein, shall, unless the context otherwise requires, have the meanings specified in this Section:

- 28.1 "Additional Rent" refers to those rents set forth at Section 5.4 above.
- 28.2 "Common Area Maintenance Agreement" means the agreement among the adjacent owners and Tenant regarding the maintenance and operation of the common area connected to the Combined Project, which agreement was recorded in the official records prior to the Memorandum of Lease.
- 28.3 "Complex" means all buildings, structures and other improvements, including the Theater and other building fixtures thereon, now located on the Property or hereafter constructed on the Property, all landscaping, fencing, walls, paving, curbing, sidewalks and gutters, drainage facilities, lighting and parking areas, roadways and similar site improvements now located or hereafter placed upon the Property.
- 28.4 "Consumer Price Index" means the Consumer Price Index-Urban Wage Earners and Clerical Workers (Los Angeles-Anaheim-Riverside, CA, All Items, Base 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau discontinue the publication of the Index, or publish the same less frequently or on a different schedule, or alter the same in some other manner including, without limitation, changing the name of the Index or the geographic area

covered by the Index, Landlord and Tenant shall adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

- 28.5 "Encumber" means the entering into of any mortgage, deed of trust, lien or other charge or encumbrance of any nature (including without limitation, the lien or retained security title of a conditional vendor) created, assumed, incurred or suffered by Tenant.
- 28.6 "Environmental Law" means any federal, state or local environmental, health and/or safety-related law, rule, regulation, requirement, order, ordinance, directive, guideline, permit or permit condition, currently existing and as amended, enacted, issued or adopted in the future. The term Environmental Law includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and similar state or local laws.
- 28.7 "Equipment" means all equipment, machinery, rigging, lighting, staging, furniture, fixtures, trade fixtures and other personalty as may be necessary or convenient to the operation, maintenance and use of the Theater.
- 28.8 "Hazardous Materials" means any substance or material defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "restricted hazardous waste", "toxic substances" or "known to cause cancer or reproductive toxicity" (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any chemical substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law or treaty regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment or natural resources ("Environmental Law").
- "Impositions" means all taxes (including, without limitation, sales and use taxes), assessments (including, without limitation, all assessments for public improvements or benefits whether or not commenced or completed prior to the Possession Date and whether or not to be completed within the Term, any and all fees, charges or assessments levied pursuant to any of the Restrictions, the Parking Plan Agreement, the Common Area Maintenance Agreement and the Common Area Development Agreement, and any Parking Fee or District Assessment, if any), water, sewer or other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including all interests and penalties thereon), which are attributable or applicable to any portion of the Term and may be assessed, levied, confirmed or imposed on or in respect of, or be a lien upon (a) the Theater, or any part thereof, or any estate, right or interest therein; (b) any occupancy, use or possession of or activity conducted in the Theater; (c) this Lease; (d) the gross receipts from the Theater; or the earnings from the use or occupancy thereof; or (e) the Landlord; other than (i) franchise, capital stock or similar taxes, if any, of Landlord (ii) income, excess profits or

other taxes, if any, of Landlord determined on the basis of its income or revenues; and (iii) any estate, inheritance, succession, gift, capital levy or similar tax, unless the tax referred to in clauses (i) and (ii) above is in lieu of, in addition to or a substitute for any other tax or assessment upon or with respect to the Property or Complex which, if such other tax or assessment were in effect, would be payable by Tenant. If any Imposition is imposed against the Property or the Complex, Tenant shall be responsible for its share thereof, as determined by Landlord in its reasonable discretion. The term "Impositions" shall also include any and all increases in the foregoing, whether foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any increase in real property taxes resulting from a sale of the Property by Landlord, or the sale or other transfer of the stock or any interest in Landlord.

- 28.10 "Initial Term" means the period commencing on the Possession Date and continuing for one (1) year thereafter.
- 28.11 "Insurance Requirements" means all terms of any insurance policy covering or applicable to the Theater, all requirements imposed by the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Theater, or any use or condition of the Theater, or any part thereof.
- 28.12 "Interest Rate" shall mean the reference or prime rate of Bank of America, N.T. & S.A., in effect from time to time plus two percent (2%), or such other substitute standard of equivalent nature as Landlord may reasonably select.
- 28.13 "Landlord" means the Redevelopment Agency of the City of Cathedral City or any successor or successors to its obligations as Landlord hereunder, whether such succession is by way of merger, consolidation or acquisition of all or substantially all of the assets of Landlord, or by assignment of this Lease or Landlord's Interest or any part thereof, or by acquisition of the Property or otherwise.
- 28.14 "Landlord's Interest" means its fee interest in the Property, its interest in the Theater and Complex, and its interest in this Lease, or any part thereof.
- 28.15 "Large Format Theater" means an "IMAX" theater or similar movie theater using a projection screen of approximately 65 feet wide by 47 feet high, showing movies produced to be viewed on such a large screen, and which is not a "first-run" movie theater (as that term is understood in the motion picture industry).
- 28.16 "Lease Year" shall mean each full 12 calendar month period after the Possession Date.
- 28.17 "Lease Year Quarter" shall mean a three (3) month segment of a calendar year; the first quarter begins with the same month as the month of Possession Date.

- 28.18 "Legal Requirements" means all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agents, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Property or Complex, or any part thereof, or to any of the adjoining sidewalks, streets or ways, or to any use or condition of the Property or Complex, or any part thereof.
- 28.19 "Minimum Monthly Rent" refers to those rents set forth at Section 5.1 above.
 - 28.20 RESERVED.
- 28.21 "Participation Rent" refers to the participation rents set forth at Section 5.2 above.
 - 28.22 "Possession Date" shall mean January 1, 2001
- 28.23 "Property" means the property legally described on Attachment 1A attached hereto.
- 28.24 "Quarterly Gross Receipts" shall mean all sums received by Tenant during the Lease Year Quarter then in question, as a result of the ownership or operation of the Theater, including without limitation, the following: (i) income received for any tickets or goods sold or services rendered by the Theater; (ii) payments from licensees or concessionaires in the Theater, including any operating expense reimbursement, (iii) the amount of any refunds of impositions or taxes; (iv) the amount of any other consideration received in relation to or in connection with the Theater, including insurance proceeds and/or judgments received by Tenant arising out of or affecting the operation and/or maintenance of the Theater; and (v) the amount of any contributions or gifts to Tenant or any proceeds received by Tenant from fund raising efforts to support Tenant's operation of the Theater.
- 28.25 "Quarterly Net Profit" shall mean the amount (if such number be a positive integer) resulting from the subtraction of the Quarterly Operating Expenses from the Quarterly Gross Receipts.
- 28.26 "Quarterly Operating Deficit" shall mean the amount (if such number be a negative integer) resulting from the subtraction of the Quarterly Operating Expenses from the Quarterly Gross Receipts.
- 28.27 "Quarterly Operating Expenses" shall mean all direct and indirect costs, fees and expenses related to the Complex actually incurred by Tenant in the Lease Year Quarter then in consideration, with respect to the possession, operation and/or

maintenance of the Theater, computed on generally accepted accounting principles consistently applied and including, but not limited to, the following costs and expenses: (i) Minimum Monthly Rent, Participation Rent, Additional Rent and any other payments due hereunder to the IMAX Corporation; (ii) premiums paid for public liability and property damage insurance obtained by Tenant and covering the Theater; (iii) installments paid in satisfaction of real property taxes, if any, assessments and/or improvement bonds assessed against the Theater by federal, state or local taxing authorities, (iv) costs paid for employees, security, maintenance, including sweeping, window cleaning, and replacement. repair, and upkeep of the Theater; (v) reasonable fees incurred for legal and accounting services rendered with respect to the operation of the Theater; (vi) reasonable and customary fees paid pursuant to garage or parking management contracts, or parking district or assessment district payments; (vii) reasonable and customary fees paid pursuant to property management contracts and/or commissions let by Tenant for operation of the Theater (including operation of the Theater or other Large Format Theater venue and its concessions), which fees shall not exceed three percent (3%) of the Annual Gross Receipts; (viii) the cost of obtaining and collecting insurance proceeds and/or judgments arising out of or affecting the operation and/or ownership of the Theater, and (ix) the unreimbursed cost of repairing the Theater. Annual Operating Expenses shall exclude cash payments made to principals (or to related parties of principals) in excess of normal industry salaries.

- 28.28 "Related Persons" shall mean (i) any entity controlling, controlled by or under common control with Tenant, (ii) any Family Member, or (iii) any corporation, partnership or limited liability company of which a Family Member or an equity owner of Tenant is a shareholder, partner or member. A "Family Member" refers to a spouse, sibling, or a direct ancestor or descendant of an equity owner of Tenant.
- 28.29 "Rent" refers to any or all of the Minimum Monthly Rent, the Participation Rent, the Additional Rent and any other sums due hereunder.
- 28.30 "Restrictions" refers to that certain "Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement" which impose certain restrictions upon the use of the Property and the Complex.
- 28.31 "Site Map" means the site map attached hereto as Attachment 1B, on which is shown the Complex.
- 28.32 "Tenant" means Cathedral City Downtown Foundation. Inc., a California not-for-profit corporation.
- 28.33 "Tenant's Leasehold Interest" means Tenant's interest in this Lease, and in the Theater.
- 28.34 "Term" means the Initial Term and each of the Renewal Terms described in Article 4, unless otherwise specifically provided herein.

28.35 "Theater" refers to the Theater to be leased and operated by Tenant in the Complex.

28.36 "Ticket" shall mean each theater admission (presumptively as evidenced by a ticket) delivered to a person by or on behalf of the Theater which allows one person admission to the Theater.

[END OF THIS PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be signed on their behalf by their respective signatories thereunto duly authorized as of the date first above written.

	REDEVELOPMENT AGENCY OF THE CITY OF CATHEDRAL AGENCY, a public body, corporate and politic		
ATTEST:	George Stettler, Chairman APPROVED AS TO CONTENT:		
Donna Velotta, Secretary APPROVED AS TO FORM:	Susan Moeller, Redevelopment Director REVIEWED:		
Charles R. Green, Agency Counsel	Donald E. Bradley, Executive Director		
	CATHEDRAL CITY DOWNTOWN FOUNDATION, a California not-for-profit corporation		
	George Stettler, Executive Officer		

ATTACHMENT 1A LEGAL DESCRIPTION

ATTACHMENT 1B SITE MAP

ATTACHMENT 2 INVENTORY AND EQUIPMENT

GRANT AGREEMENT

This Grant Agreement ("Agreement") is entered into this	day of
, 2001, by and between the Redevelopment Agency of the	City of
Cathedral City (the "Agency"), a public body corporate and politic, and the Cathed	ral City
Downtown Foundation (the "Foundation"), a California nonprofit public benefit corpo	oration,
for the purposes indicated below.	,

RECITALS

- A. The Agency is a redevelopment agency formed and operating under the Community Redevelopment Act of the State of California. The Foundation is a tax exempt foundation founded for the furtherance of public and charitable purposes, and to operate educational facilities and/or attractions in the downtown area of the City of Cathedral City (the "City").
- B. The Agency, under the terms of various agreements and guaranties, has become the owner and operator of that certain large format theater facility commonly referred to as the Desert IMAX Theater, located at the northeast corner of Cathedral Canyon and East Palm Canyon, in the City (the "Theater"). The Agency does not wish to continue in the business of operating the Theater and the Foundation has agreed to provide certain assistance in that regard.
- C. The parties hereto acknowledge and agree that the Theater is an important community asset, providing educational, cultural and entertainment opportunities to the residents of the City and is an essential component of the Agency's long term strategy for the elimination of blight in the downtown core of the City. They further acknowledge that the closing of the Theater would have an immediate and adverse effect on the downtown core area and impede the Agency's efforts to revitalize that area.
- D. Concurrently herewith, the Agency and the Foundation have entered into that certain Lease Agreement By and Between The Redevelopment Agency of the City of Cathedral City and Cathedral City Downtown Foundation, dated as of January 1, 2001 (the "Lease"), whereby the Foundation will lease the Theater from the Agency and operate it as a large screen format theater. The parties acknowledge that the revenues derived from the operation of the Theater for the period of the Lease will not be sufficient to cover the operating costs of the Theater. In order to provide assistance to the Foundation in covering the operating costs of the Theater, the parties have entered into this Agreement whereby the Agency will grant to the Foundation certain funds on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and consideration set forth in this Agreement, the parties hereto agree as hereinafter set forth.

TERMS AND CONDITIONS

Section 1. <u>Incorporation of Recitals</u>. The recitals set forth above are incorporated hereby by reference.

Section 2. <u>Grant by Agency</u>. The Agency hereby grants to the Foundation, on the terms and conditions which are set forth in this Agreement, certain funds not to exceed a maximum of Four Hundred Fifty Six Thousand Dollars (\$456,000) (the "Grant") during the Agency's fiscal year, ending on June 30, 2002. This grant is subject to the following conditions:

- a. The Agency will advance to the Foundation from time to time portions of the Grant as the parties agree is necessary in order to provide sufficient support such that the Theater can operate at a break even point, after taking into account the revenues of the Theater from ticket sales, concessions and such other activities as may occur from time to time, and after taking into account any donations from third parties received by the Foundation.
- b. Grant funds will be used solely towards expenses which have been approved by the Agency in its reasonable discretion. In order to receive any Grant advances, the Foundation shall provide the Agency with a pro forma budget, outlining expected revenues and expenses, and the Agency shall have the right to approve that budget. The Foundation shall provide the Agency actual profit and loss statements prepared in accordance with generally accepted accounting principles at such times as reasonably requested by the Agency, but not less than quarterly.
- c. The Agency may elect to make payments directly to third party vendors or creditors.
- d. Any portion of the Grant not expended during the Agency's fiscal year ending June 30, 2002, shall no longer be available to the Foundation. For the purposes of this Agreement, "expended" shall mean either actually advanced or approved by the Agency for commitment prior to the end of the fiscal year even if actually advanced thereafter.
- e. The Agency may, at its sole option, cease advancing Grant funds at any time if:
 - 1. The Foundation ceases to operate the Theater.

- 2. The Foundation violates any term or condition of this Agreement or of the Lease.
- 3. The Agency, in its reasonable discretion, determines that the Theater cannot continue to operate at a break even point for the balance of the Agency's fiscal year even with the Grant funds.
- 4. The Foundation fails to pay any obligation arising from the operation of the Theater for which the Agency is liable or which the Agency has guaranteed, or uses any portion of the Grant for any purpose not previously approved by the Agency.

5. The Foundation:

A. Has its tax exempt status revoked by the Internal Revenue Service or the State of California;

- B. Is suspended as a legal entity by the State of California; or
- C. Files for any proceeding under the Bankruptcy Act, or is placed in receivership, either voluntarily or involuntarily.
- f. The Foundation shall not be liable for the repayment of any portion of the Grant except in the case of misappropriation of Grant funds for any unauthorized purpose, in which case the Foundation shall be liable for the return of the funds so misused.
- Section 3. <u>Foundation Obligation to Operate Theater</u>. The Foundation agrees that it will, as a condition for receipt of the Grant, operate the Theater in accordance with the terms of the Lease.
- Section 4. <u>Indemnification by Foundation</u>. The Foundation hereby indemnifies the Agency, the City and all of their respective agents, employees, officials, officers and attorneys (collectively, the "Indemnitees") from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, expenses and charges (including the reasonable fees, charges and disbursements of internal and external counsel) suffered or incurred by any of the Indemnitees as a result of (a) any failure of the Foundation to perform its obligations under this Agreement or the Lease, (b) injury or death or any persons or damage to property or other loss occurring on, in or in connection with the operation of the Theater by the Foundation or any of its employees, agents, servants or assignees, whether caused by the negligence or any other act or omission of the Foundation or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance of the Theater or any other condition whatsoever, and (c) any claim, demand or cause of action, or any action or other proceeding, whether

meritorious or not, brought or asserted against any Indemnitee which related to or arises out of this Agreement, the Lease, the operation of the Theater or any other act or transaction contemplated hereby, provided, however, that no Indemnitee is entitled to indemnification under this section for matters caused solely by such Indemnitee's gross negligence or willful misconduct. Any obligation of the Foundation under this section shall survive the termination of this Agreement or of the Lease.

Section 5. <u>Agency Remedies</u>. In the event of a default or breach of this Agreement or the Lease by the Foundation which continues to exist after ten (10) days written notice, the Agency will have, at its sole option and election, any or all of the following remedies:

- a. The Agency may, as indicated, cease further advances of Grant funds, and may, with respect to funds covered under Section 2.f hereof recover such funds, through whatever legal means it may elect.
- b. The Agency, at its sole option, may declare the Lease to be in default as a result of any breach of this Agreement, and vice versa, and may take any action permitted thereunder.
- c. The Agency may take any other action permitted by law or equity, including, without limitation, actions for injunction.
- d. Each of the remedies of the Agency under this Agreement and/or the Lease is cumulative and non exclusive of, and shall not prejudice, any other remedy provided in either agreement or by applicable laws. Each remedy may be exercised from time to time as often as the Agency deems necessary and in such order and manner as the Agency may determine. No failure or delay on the part of the Agency in exercising any remedy shall operate as a waiver of such remedy, nor shall any single or partial exercise of any remedy preclude any other or further exercise of such remedy or of any other remedy.

Section 6. Attorneys' Fees. If any lawsuit, reference or arbitration is commenced which arises out of or related to this Agreement or the Lease, the prevailing party shall be entitled to recover from the other party such sums as the court, referee or arbitrator may adjudge to be reasonable attorneys' fees in the action, reference or arbitration, in addition to any costs and expenses otherwise allowed by law. In all other situations, including any matter arising out of or involving any insolvency proceeding, the Foundation agrees to pay all of the Agency's costs and expenses, including attorneys' fees, which may be incurred in enforcing or protecting the Agency's rights under this Agreement or the Lease.

Section 7. Miscellaneous Provisions.

- a. Time is of the essence in this Agreement and in the Lease.
- b. The provisions of this Agreement shall be severable.
- c. This Agreement shall be governed by and interpreted in accordance with the provisions of California law, and the proper venue for any action between the parties hereto shall be the County of Riverside, State of California.
- d. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement.
- e. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provisions hereof.
- f. This Agreement may be amended or modified only in a written instrument executed by both parties hereto.
- g. This Agreement may not be assigned by the Foundation without the express written consent of the Agency, which may be granted or denied at the Agency's sole discretion.
- h. Nothing in this Agreement shall be deemed to be the agreement of the Agency to provide any form of assistance to the Foundation or to the operation of the Theater, financial or otherwise, except as specifically provided herein.

WHEREFORE, in consideration of the foregoing, the parties hereto have entered into this Agreement on the date above and intend by their signatures affixed hereto to be bound to the terms hereof.

REDEVELOPMENT AGENCY OF THE CITY OF CATHEDRAL CITY

APPROVED AS TO CONTENT.	Donald E. Bradley Executive Director
Susan F. Moeller Redevelopment Director	
APPROVED AS TO FORM.	
Agency Counsel	CATHEDRAL CITY DOWNTOWN FOUNDATION
	Chairman of the Board
	Secretary of the Board

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CITY OF CATHEDRAL CITY CITY COUNCIL AGENDA REPORT

SUBJECT: CDBG Fund Programming

CONTACT PERSON: Tony Barton

DEPARTMENT: Economic Development

MEETING DATE: December 12, 2001

DEADLINE FOR ACTION: N/A

APPROVED:

Department

City Manager

Finance

Executive Summary:

The City Council has annually determined the use of Community Development Block Grant (CDBG) funds and entitlements. Projects must meet the eligibility requirements as set down by the Housing and Urban Development Department of the Federal Government and Riverside County Economic Development Department. The City Council has an entitlement for fiscal year 2001/2002 that has yet to be earmarked for a specific project. Staff is recommending that the entitlement in the amount of \$254,553 be utilized in conjunction with the Economic Development Agency (EDA) Public Works Grant Program for off-site improvements for the Downtown Hotel/Conference Center Project.

RECOMMENDATION: That the City Council approve the City's Community Development Block Grant funds for fiscal year 2001/2002 in the amount of \$254,533 for the off-site improvements of the Downtown Hotel/Conference Center Project and that the City Council authorize the City Manager to sign a supplemental agreement with Riverside County Economic Development Agency for the entitlement.

BACKGROUND:

Staff and the City Council have been working with a developer on the Date Palm/E. Palm Canyon site for the development of a hotel, conference center, mixed use retail, housing and mixed use office space. Subsequently, Staff has applied for a grant under the EDA Public Works Program in the amount of \$1,434,000 or roughly 50% of the costs of off-site improvements. The addition of the City's entitlement of CDBG funds will bring the total grant dollars available to \$1,688,553.

ANALYSIS:

It is Staff's determination that this is a very good use for CDBG funds for several reasons. First, the project will create 375 new jobs after completion. Second, the City is committed to working with the Work Force Development Center for employment outreach, training and placement services in addition to providing participation in welfare to work programs. Third, the proposed site is one of the oldest and most deteriorated areas of the City. Therefore, the CDBG funds and the EDA grant will fit very well into the overall plan for the redevelopment of the Downtown area.

In addition, Staff is very confident the EDA Public Works Grant will be awarded shortly.

ALTERNATIVES:

Although the City Council has a variety of alternatives at their disposal, Staff believes that a negative vote could greatly impair the overall development of the project.

ATTACHEMENTS:

EDA Grant Application Project Summary City Engineer's proposed improvements

CITY OF CATHEDRAL CITY

EDA PUBLIC WORKS GRANT APPLICATION PROJECT SUMMARY

- The site includes four development components totaling \$110 million with a hotel and conference center, mixed-use retail and housing and mixed use office, retail and housing cannot go forward for lack of off-sites improvements.
- The EDA request is for \$1,434,000 or 50% of the \$2,868,000 in off-site improvement costs.
- The 54-acre development sites north and south of East Palm Canyon Drive (formerly State Route 111) and Date Palm Drive (a major arterial that connects to Interstate 10) provide tremendous visibility and access.
- Total FTE job generation is projected at 375 when completed at an EDA cost per job of \$3,824.
- The City's minority population is 63% of the total City and 84% of Census Tract 450 where the development will occur.
- Cathedral City will work with the recognized One-Stop Center, the Workforce Development Center, for employment outreach, training and placement services. Project beneficiaries will participate in welfare to work programs.
- Based on EDA Area of Distress numbers, Cathedral City's unemployment rate is 5.7% as compared to the national rate of 4.4% at the time of the calculation. The EDA data did not have per capita income, but the level in the 1990 Census data was \$13,331, which was below the national average.
- Poverty levels Citywide from the 1990 Census were 16% and in the Census Tract 450 where the EDA improvements will be constructed, were 23%. (The 2000 Census does not yet have poverty, unemployment or per capital income data available).
- The project site is in the oldest, most deteriorated part of the City, where General Patton took his troops for "relaxation" at the houses of ill repute during desert training for North Africa in 1942 and 1943. The Redevelopment Plan describes the area as containing "the bulk of the dilapidated and overly crowed residential properties in the City".
- City Redevelopment Agency has identified all the development groups for each component, including existing property owners, new developers and through the creation of a non-profit City Urban Revitalization Corporation that will build and own the hotel and conference center. The operator will be Starwood Hotel and Resorts that will operate the hotel under the Sheraton Hotel flag.
- Project builds on the tremendous accomplishments of the City in creating a downtown with a
 new City Hall, the Mary Pickford multiplex theater, IMAX theater and about to begin retail
 development. Those new downtown developments are immediately adjacent to the four
 development sites assisted by the EDA funds.
- The City match is committed.
- City has exhausted its resources to carry out the project and the EDA funds fill the remaining gap.

Additional property will be acquired and dedicated for a new street to be constructed between C and D Streets. All of the EDA funded public improvements will be constructed in the public rights-of-way or easements that are, or will be owned or controlled by the City.

The proposed EDA funded public improvements to be constructed within the public rights-of-way, include street improvements, curbs, gutters and sidewalks, sanitary sewer and water lines, street lights, landscaped medians and vaults and substructures required prior to installation of lines by the "dry utility" companies. The following is a listing of the items and quantities:

East Palm Canyon Drive (Van Fleet to Date Palm Drive), including Allen Avenue entrance:

Clear and Grub: mobilization (entire project)	1 Is
Remove old curb and gutter:	760 lf
Remove asphalt for widening:	5500 sf
Remove retaining walls:	600 lf
Remove sidewalks:	10600 sf
New curb and gutter (including medians):	1420 lf
Roadway grading:	600 cy
New pavement and base:	15400 sf
Access ramps:	6 ea.
Cross gutter & spandrels:	2000 sf
Street lights:	10 ea.
Storm drain modifications:	1 ls
Traffic signal modifications:	2 ea.
Fire hydrant:	2 ea
Parkway and median landscaping:	1 ls

Van Fleet Avenue (East Palm Canyon to "D" Street):

Remove old curb and gutter:	100 lf
Remove asphalt:	8400 sf
Grind ex. asphalt:	16000 sf
Remove sidewalks:	500 sf
New curb and gutter:	650 lf
Roadway grading:	1000 cy
New pavement, base and overlay:	40000 sf
Access ramps:	5 ea
Cross gutter and spandrels:	4000 sf
Street lights:	3 ea
Traffic signal modifications:	1 ea
Fire hydrant:	2 ea
Parkway landscaping:	1 ls

"D" Street (Van Fleet to Date Palm):

9000 sf Remove old asphalt: 9000 sf Grind ex. asphalt: 2000 lf New curb and gutter: 2500 cy Roadway grading: 63000 sf New pavement, base, and overlay: 7 ea Street lights: 1 ls Storm drain system and channel inlet: 1 ls Parkway landscaping:

Sewer Improvements:

<u>Date Palm extension</u> (E. Palm Canyon to Buddy Rogers):

12" sewer main: 800 lf Sewer manholes: 4 ea.

"C" and "D" Street extension:

12" sewer main: 1500 lf
Sewer manholes: 7 ea
Laterals: 12 ea

Allen-Grove Extension (to Date Palm):

8" Sewer main: 800 lf
Sewer manholes: 3 ea
Laterals: 16 ea

Water Improvements:

"C" and "D" Street Extension:

12" water main: 1100 lf
Fire hydrant: 4 ea
Valves, fittings, etc. 1 ls

Utility Infrastructure:

Underground existing overhead utilities:

"C" and "D" Street extension:

trench and conduits: 1400 lf vaults and substructures: 5 ea

Van Fleet, "A" Street to "D" Street:

Trench and conduits: 700 lf vaults and substructures: 6 ea

CATHEDRAL CITY REDEVELOPMENT AGENCY (Consent) AGENDA REPORT

SUBJECT: Purchase of property at 68556 Avenida Lalo Guerrero (Daniel & Emily Sabo)

DEPARTMENT: Affordable housing MEETING DATE: Dec. 12, 2001 CONTACT PERSON: Bradshaw / Moeller Deadline for Action: NA

APPROVED: Department Executive Director Finance

RECOMMENDATION:

Authorize the Redevelopment Director to purchase property located at 68556 Avenida Lalo Guerrero (APN 687-170-007) for an amount not to exceed \$280,000 (plus approximately \$910 for buyer's normal share of estimated escrow costs) to be paid from the Redevelopment Agency Affordable Housing Set Aside Fund (Acct. 211-8870, site acquisitions/Landbanking) for the purpose of affordable housing.

BACKGROUND:

This parcel is 210 ft by 100 ft. and contains 21,000 square feet with seven rental units. There are seven one-bedroom units and a two-bedroom unit. The primary construction was done in 1950. The property has been listed for sale for \$359,000 for more than a year but has not sold. The owners have decided that the only way to get their asking price is to make cosmetic renovation to the property. Prior to taking the risk of making this added investment the owners have offered to sell the property to the Agency at the discounted price of \$280,000. The Agency Board discussed the offer in closed session on November 28, and directed that the offering be placed on the next consent agenda. The site is adjacent to the City's downtown parking garage. Escrow instructions have been signed by the seller and are ready to be executed pending the Board's wishes.

ANALYSIS:

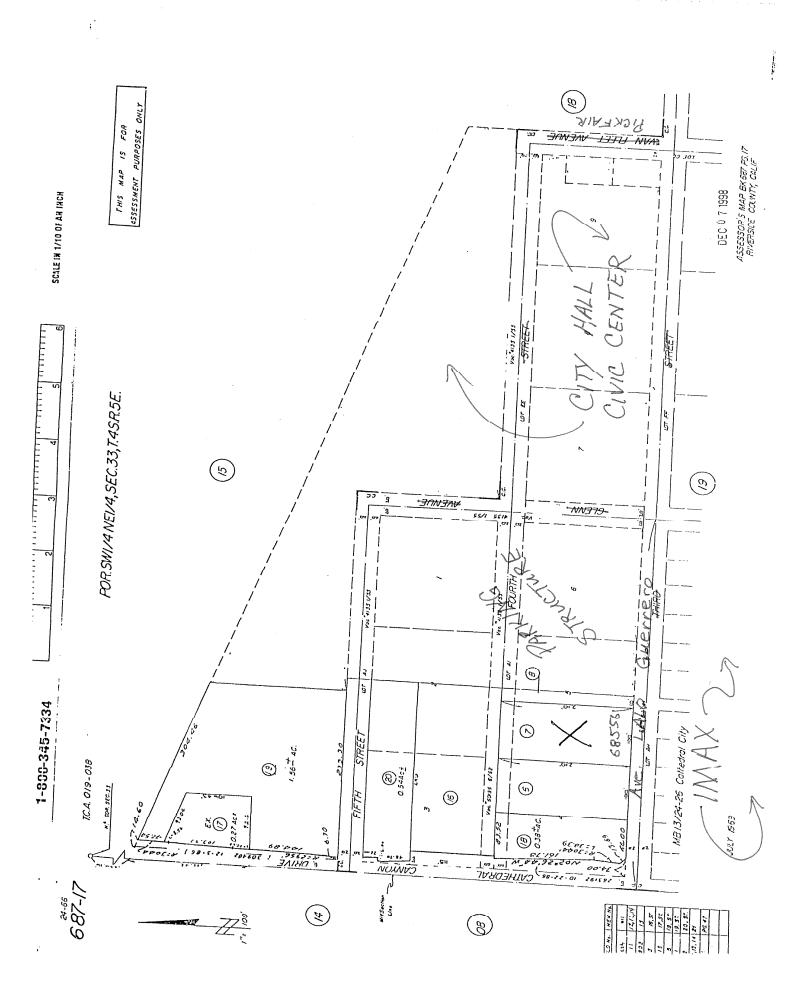
This is an opportunity to clean up some 50-year-old housing product within view of the City's IMAX Theater extension and future commercial development sites. The site is large enough to be developed with housing without the requirement of any additional land. There is no relocation involved.

FINANCIAL IMPACT:

Sufficient funds for this acquisition and lot clearance are available in the Affordable Housing Set Aside Fund (account 211-8870 for site acquisition/Landbanking). Two bids for demolition were \$13,000 and \$16,000 respectively, but the fire department has requested to use the structures as a firefighting exercise which would reduce the costs.

ATTACHMENTS:

- 1. Location and layout of property under consideration.
- 2. Letter of offering and property profile.



Troperty Frojue

Description of the Subject Property

Ownership Information

Primary Owner

DANIEL & EMILY SABO

Secondary Owner:

ANCA SCORTEANUA Removed by recorded grant deed

Ownership Description:

Fractional Interest

recorded Aug. 11, 1999

Site Address:

68516 3RD ST CATHEDRAL CITY 92234-1221

Mailing Address:

70935 TRONWOOD DR RANCHO MIRAGE, CA 92270-1962

Telephone:

Assessors Parcel No. ;

687-170-007

Census Tract :

0450-001

Map Page Grid:

192 A6

New Page Grid: 787 E7

Legal Description:

POR LOT 5 MB 013/024 CATHEDRAL CITY

Housing Tract :

Property Details

Use Code:

Zoning ; C1

Number of Units: 10

Year Built : 0

Lot Size: N/A

Square Feet: N/A

Total Rooms: N/A

GeoQuality: 1

Bedrooms: N/A

Bathrooms: N/A

Parking: Unknown

View: N/A

Pool N/A

N/A

FirePlace:

Tax Information

Assessed Total: \$181,602

Land Total: \$150,003

Improvement: \$31,599

% Improvement: 17% Exemption: N/A

Year Delinquent: N/A

Tax Rate Area:

Tax Amount:

Tax Status:

19038

\$2,060.68

Current

Sale Information

Last Sale Date:

October 5 1992

Lender:

PALM SPRINGS S&L

Document No.:

0000371945 \$125,000 (Full)

1st Loan Amount: First Loan Type: \$105,000 Conventional

Sale Amount: Last Trans W/O \$: November 21 1996

2nd Loan Amount:

Last Doc W/O S:

Cost / Square Feet:

N/A

0000445554

N/A





George A. Rex REALTOR®

BUSINESS VOICE PGR FAX

760/776-9898 760/776-2117 760/776-1666 800/866-6361 160/7996 a

72605 Highway 111

Palm Desert, California 92260 INDEPENDENTLY OWNED AND OPERATED

November 12, 2001

Cathedral City Housing Department 68700 Avenida Lalo Guerrero Cathedral City, Ca. 92234

Re: 68556 (3rd Street) Lalo Guerrero Cathedral City, Ca. 92234

To: Cathedral City Housing Department: c/o Warren Bradshaw-Program Manager

We the undersigned offer the property located at 68556 (3rd Street) Lalo Guerrero, Cathedral City, Ca. 92234, APN #: 687-170-007-2 to the Cathedral City Housing Department.

The legal description is as follows: APN# 687-178-007-2

TRA- 019038 City of Cathedral City Legal-POR LOT 5 MB 013/024

The proposed terms of the offer are as follows:

A. The sales price is to be \$280,000 (Two hundred eighty thousand dollars)

B. The property will be purchased in its present condition. (vacant) - rendy for remobile or

C. Escrow fees shall be shared 50/50 by the buyer and seller.

D. A commission of 8% shall be paid directly to: Fred Sands Desert Realty 72605 Hwy 111 Palm Desert, Ca 92260 Palm Desert, Ca 92260

E. The escrow period shall be 45 days or sooner. $A \leq AF$

Thank you for your time and consideration. Please advise at your earliest convenience.

Daniel Salo

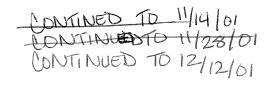
Sincerely

cc: George Rex/Britta Miller (agents)

Fred Sands Desert Realty 72605 Hwy 111

Palm Desert, Ca. 92260 (760) 799-6001 cell

(760) 776-9898 office



CITY OF CATHEDRAL CITY CITY COUNCIL AGENDA

SUBJECT: Ritz Carlton Golf Course: Parcel Map PM 29719: Approval of Final

Parcel Map.

DEPARTMENT: Engineering MEETING DATE: October 24, 2001

DEADLINE FOR ACTION: N/A

CONTACT PERSON: Dave Faessel, City Engineer

APPROVED:

epartment City Manag

Finance

RECOMMENDATION:

I hat the City Council approve the final map of Parcel Map 29719, accept the dedications made to the City on the final map, and authorize execution of the performance agreement.

BACKGROUND/ANALYSIS:

The tentative map for Parcel Map 29719, located along the East Cathedral Canyon wash, was approved by the City Council in July of 2000. The tentative map consists of 11 parcels, owned by the City of Cathedral City, the Redevelopment Agency of the City of Cathedral City, and the City of Rancho Mirage. The purpose of the map is to create several parcels to facilitate the development and construction of a golf course.

The City has already executed two leases with the golf course developer covering the land to be developed. The parcels being created outside of the proposed golf course will remain vacant. Several of these, located within Rancho Mirage, have conservation easements on the parcels.

The total area within the map is 987.8 acres. The four parcels being developed as a golf course total about 157 acres.

This map divides land within both the City of Cathedral City and Rancho Mirage. Consequently, both cities must approve and sign the final map.

Final Map: The developer's (lessee's) engineer has prepared a final map, which is ready for final map approval. The land has been surveyed and the final map has been submitted and reviewed. The map is in conformance with the tentative map and with the State Subdivision Map Act. All required securities have been posted to guarantee completion of all improvements, and the developer has executed a performance agreement.

Dedications: The map dedicates easements along the channel levee for emergency access and for public services. At the Council and Agency meeting of September 10, 2001, the Council and Board authorized the dedication of the easements to the City. Staff recommends that these offers be accepted.

Conditions: A number of conditions were applied to this map and to the related Conditional Use Permit. Other conditions from various leases, development agreements, and other agreements between the various parties involved also have been applied to the approval of this map. All of these have been reviewed and those pertinent to the final map approval have been complied with.

Subdividers: The City of Cathedral City and its Redevelopment Agency are land owners in the parcel map and as such are subdividers, per the State Subdivision Map Act. At the Council and RDA meeting of September 10, 2001, the Council and Agency Board authorized their respective officers to sign this map as subdividers.

FISCAL IMPACT:

Approval and recordation of this map will allow the construction of the golf course. Construction and use of the course will initiate lease payments to the City, per the terms of the existing leases with the developer.

ATTACHMENTS:

None